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**THE
COMMERCIAL LAWS OF THE WORLD**

**VOLUME XIV
GREAT BRITAIN AND IRELAND II**

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AMERICAN EDITION

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THE
COMMERCIAL LAWS OF
THE WORLD

COMPRISING

THE MERCANTILE, BILLS OF EXCHANGE, BANKRUPTCY
AND MARITIME LAWS OF ALL CIVILISED NATIONS

TOGETHER WITH

COMMENTARIES ON CIVIL PROCEDURE,
CONSTITUTION OF THE COURTS, AND
TRADE CUSTOMS

IN THE ORIGINAL LANGUAGES INTERLEAVED
WITH AN ENGLISH TRANSLATION

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NUMEROUS EMINENT SPECIALISTS OF ALL NATIONS

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THE COMMERCIAL LAW OF GREAT BRITAIN AND IRELAND

BY

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Commercial Laws of Scotland.

By **J. W. Brodie-Innes**, B. A., LL. M., Barrister-at-Law; also of the Scots Bar.

Introduction.

Scotland has always possessed a legal system of her own, entirely independent of that of England and presenting considerable differences in substantive law, in the constitution of Courts, and in their practice. The Courts and their jurisdiction have been specially preserved, notwithstanding the union of the Crowns, and the two countries are therefore still regarded as countries foreign to each other, save where special rules and regulations have been made as to the mutual relations of the Courts¹).

If therefore the law or practice of either country comes to be considered in the Courts of the other it will be presumed to differ until it is proved to be the same, and the law of the other country is enquired into as a fact. Two statutes, the British Law Ascertainment Act 1859²), and the Foreign Law Ascertainment Act 1861³), have been passed to simplify the procedure. The usual means is by the evidence of counsel, given in the form of an affidavit or orally in Court. But in difficult cases, in the discretion of the Court asking the opinion, the case may be sent for opinion to the Courts of the other country⁴).

The laws, though differing considerably still, are continually approaching each other and will doubtless ultimately assimilate. As might be expected the nearest approach is in Commercial Law. The constant intercourse of the two countries in commerce naturally renders every divergence a matter of trouble, delay, and loss. The influence of the merchants and business men of the two countries has therefore prevailed to the extent that nearly all the Statutes relating to Commercial Law apply to both countries, and the differences are confined to points of Common Law not covered by Statute and to the necessary result of the differences in the Courts and their practice.

In the following pages we must reverse the legal presumption for the sake of brevity and assume, as is practically the case, that the law of Scotland is the same as that of England, except where the contrary is here set down. We shall follow the same order of titles.

Title I. Companies.

It may be noticed to start with that in Scotland the word company is often used to denote a firm or partnership as well as a joint-stock company or one existing under Charter or Statute, to which latter the term, when used technically, is restricted in England. Also that whereas in England a company with transferable shares could not exist at Common Law; it could so exist in Scotland without any authority from the legislature⁵). These differences need to be borne in mind. Companies in England are therefore entirely the creation of Statute and are regulated thereby, and the Companies Act applies to Scotland with only such variations as are necessitated by differences of procedure. But in Scotland for any point not covered by the Act we may look to the Common Law so far as applicable.

Companies in both countries are now regulated by the Companies (Consolidation) Act 1908⁶). Some sections in this Act apply specially to Scotland, and may be taken to indicate all the important practical differences still existing. By old Scots Law all transfers were void in which the grantee's name was left blank⁷). To this there were recognised exceptions, as bills and notes, indorsations on the same,

¹) See remarks of Rigby, L. J. in *MacIver v. Burns* [1895] 2 Ch. 630, also of Jessel M. R. in *re Orr Ewing* (1882) 22 Ch. D. p. 464; Dicey Conflict of Laws, 68 No. 1.

²) 22 & 23 Vict. c. 63.

³) 24 & 25 Vict. c. 11.

⁴) *Trappes v. Meredith* (1871) L. R. 7 Ch. 248 & 10 Macph. 38; also *Hewitt's Trustees v. Lawson*, 18 R. 793 & 41 Ch. D. 394.

⁵) 2d Rep. Merc. Law Com. No. 102. *Stevenson v. McNair*, 3 Ross L. C. 580.

⁶) 8 Edw. VII, c. 69.

⁷) 1696, c. 25.

orders *in re mercatoria* and bills of lading. Documents which by general mercantile usage are drawn blank and pass without assignation have been considered also exempt. The Act of 1908, s. 106, specially declares debentures to bearer issued in Scotland to be valid.

Some differences in the winding up of companies need to be noted. The jurisdiction to wind up is confined to the one or other Division of the Court of Session, or in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary during Session, and in time of vacation the Lord Ordinary on the Bills. So where the Court makes a winding up order it may if it thinks fit at any time direct all subsequent proceedings to be taken before any of the permanent Lords Ordinary and remit the winding up to him accordingly, and thereupon that Lord Ordinary will for the purpose of the winding up have all the power and jurisdiction of the Court¹). Although in England jurisdiction in winding up has been given to the County Courts, the same has not been extended to the Sheriff Courts, which are the Scottish analogue.

In England there is usually attached to the Court for Bankruptcy purposes an Official Receiver to whom on the making of a winding up order is submitted a statement of the affairs of the company, and who presents a preliminary report to the Court. The Official Receiver is often appointed Liquidator, and in the event of any vacancy in the office of Liquidator, he by virtue of his office fills the place²). In Scotland there is no such office attached to the Court. It is therefore necessary for the Court to appoint a Liquidator, and it may determine whether any and what security should be given by him. He is termed the Official Liquidator, and during any vacancy the property of the company is deemed to be in the custody of the Court³).

In England the Liquidator must obtain the sanction of the Court to employ a solicitor. In Scotland he may do this without leave. But, on the other hand, while in England he may do certain acts of administration without leave, such as:⁴)

1. Selling the company's property.
2. Executing deeds, receipts and other documents.
3. Proving and claiming in the bankruptcy of a contributory.
4. Drawing, accepting or indorsing bills or notes.
5. Raising money on the assets of the company; or
6. Taking out letters of administration to any deceased contributory,

he requires leave to do any or all of these in Scotland⁵).

The committee of inspection, which has important functions in an English winding up, has no statutory existence in Scotland⁶). The control over the Liquidator exercised in England by the committee of inspection or the Board of Trade is in Scotland for the most part exercised by the Court. The Liquidator may produce a certified list of the names of contributories liable to the payment of calls, and the Court may forthwith pronounce a decree for payment of the sums so certified to be due, with interest from the date when they were due until payment at the rate of 5 per cent. per annum, if they had consented to registration for execution, and such decree may be enforced in England or Ireland by the Courts having jurisdiction there⁷). After the presentation of a petition, and before a winding up order, the Court may stay or restrain proceedings against the company, and, in the case of a company being wound up in England, the English Court may restrain proceedings in Scotland⁸); but a difference occurs in the case of a purely voluntary winding up; in this case in Scotland the Court has no power to stay proceedings by a creditor⁹); the English rule is different¹⁰).

A winding up order in Scotland is equivalent to an arrestment in execution and decree of furthcoming, and to an executed and completed poinding, and, with regard to the heritable estates of the company, to a decree of adjudication for the whole debts of the company. It also annuls any poinding of the ground which has not been

1) 25 & 26 Vict. c. 89, s. 81.

2) 8 Edw. VII. c. 69, ss. 146—148.

3) *Ib.* ss. 149—159.

4) *Ib.* s. 151 (1) (d).

5) *Ib.* s. 151 (2).

6) *Ib.* s. 160.

7) *Ib.* s. 179, 180.

8) *Ib.* s. 140.

9) *Sdeuard v. Gardner*, 3 R. 577; *Allan v. Cowan*, 20 R. 36.

10) *Black & Co.'s case*, L. R. 8 Ch. 254.

carried into execution by sale of the effects sixty days before the commencement of the winding up¹⁾.

Any Court having jurisdiction to wind up a company may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, and the order or commission to take this examination must be directed to the Sheriff of the county in which the person to be examined is for the time being²⁾.

Title II. Partnership.

Here too the law of both countries has been for the most part codified by the Partnership Act, 1890³⁾. There are however some important variations. As to the persons capable of becoming partners — in England an infant may be a partner but incurs no liability, and is not responsible for the firm debts⁴⁾, but in Scotland a pupil cannot become a partner, though he may be beneficially interested in a share in the partnership⁵⁾, but a minor can become a partner and be liable for the firm's debts⁶⁾. Under the old law a married woman could not be a partner, and the marriage of a female partner *ipso facto* dissolved the firm as if she had died⁷⁾. Whether this rule is altered by the Married Women's Property Acts has not yet been decided, but it is thought at all events that it would give the other partners a right to apply for a dissolution. Under the English Married Women's Property Acts a married woman can now be a partner⁸⁾.

The chief distinction, however, is that in Scotland the firm is a legal person apart from the partners who compose it⁹⁾; — while in England this is not so. This has an important bearing on the manner of suing or being sued. In Scotland this may be in three ways, *viz*:

1. In the individual names of all or a majority of the partners or members.
2. In the general name of the firm, when descriptive (i. e. not the name of persons, but a fancy name, coupled with the names of three partners at least if so many exist¹⁰⁾).
3. In the name of the firm itself where this is not descriptive but consists of the names of partners.

The theory of the firm in both countries seems to be in a state of transition, for though in England the firm name may be used in commencing an action, as a convenient symbol, this does not incorporate the firm¹¹⁾, and in Scotland the prohibition of suing in a fancy name without the names of partners seems somewhat illogical, especially as a firm may sue in a name consisting of ostensible names of persons though none of them are now members of the firm. In an action for debt against a firm it is necessary to constitute the debt (*i. e.* to establish a liquid and definite claim) against the firm before an individual partner or partners can be proceeded against¹²⁾.

As to debts and obligations each partner in Scotland is liable for the firm, and this liability has always been a joint and several one, the partners being regarded more as cautioners or sureties for the firm than as principals. The non-payment by the firm at once raises their responsibility. They are conditional debtors, if the debt is not paid punctually on the proper day¹³⁾. When the debt is constituted against the firm the joint and several liability of the partners arises¹⁴⁾. It is to be noted however that the word "jointly" has a different meaning in Scotland from that which it bears in England or Ireland. In the latter countries when two or

¹⁾ 49 & 50 Vict. c. 23, s. 3.

²⁾ 8 Edw. VII, c. 69, s. 227.

³⁾ 53 & 54 Vict. c. 39.

⁴⁾ *Lovell v. Beauchamp* [1894] A. C. 607.

⁵⁾ *Fraser, Parent & Child*, 150.

⁶⁾ *Duncanson v. Duncanson* (1716) Mor. 8928.

⁷⁾ 2 Bell Com. 524.

⁸⁾ *Lindley on Partnership* 675.

⁹⁾ *Stair* 1, 16; *Ersk* III, 3; 2 Bell Com. 507.

¹⁰⁾ *Culterough Cotton Co. v. Mathie*, 2 Sh. 47; *Kerr v. Clyde Shipping Co.*, 1 D. 901; *Antermoney Coal Co. v. W'ingate & Co.*, 1 Macph. 1017.

¹¹⁾ *Ex p. Blaine*, 12 Ch. D. 522.

¹²⁾ *Mc. Naught v. Milligan*, 13 R. 366; for a history of the Scottish Rule see *Clarke on Partnership*.

¹³⁾ 2 Bell Com. 507.

¹⁴⁾ 53 & 54 Vict. c. 39, s. 4.

more persons are liable jointly, each is liable for the whole debt, yet they are considered as forming one person and must be sued together, but in Scotland a joint liability is a *pro rata* liability¹⁾. Thus in England a creditor can sue one or other of the partners or all of them at his option²⁾, in Scotland he must call all the partners or co-obligants within the jurisdiction before the several liability can be enforced against any one. So in Scotland an individual partner paying the debts is entitled to relief *pro rata* from the firm and its other members. Section 46 saves the rules of Common Law so far as not inconsistent with the Act.

In the Act the rule is thus stated "Every partner in a firm is liable jointly with the other partners, and in Scotland he is liable severally also, for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for such debts and obligations, but subject in England or Ireland to the prior payment of his separate debts"³⁾.

The Section is ambiguous unless we consider that the word "jointly" is used in different senses, and that the intention is really to assimilate the law.

Title III. Agency.

Scottish law originally adopted the Roman contract of mandate by which one employs another to manage a business for him without hire. But this has been now almost entirely superseded by the contract of agency or factory, which is the employment of another for hire to do business as factor⁴⁾. The contract of mandate still exists, however, and governs gratuitous agency. In Scotland as a rule an agent may be appointed by writing, formal or informal, or by parol, or by implication from circumstances, and an act done by an agent without authority may be subsequently ratified. The English statutes, such as Lord Tenterden's Act (9 Geo IV. c. 14), requiring writing for certain transactions, do not apply to Scotland, but there are some purposes for which the contract either is required to be in writing, or cannot conceivably be proved otherwise, for example the authority of a Judicial Mandatory, to sue or defend on behalf of a principal who is abroad, or a proxy to vote for another at meetings. Subject to these exceptions parol proof is always competent. In general, however, with these slight exceptions, the customs of merchants regulate the contract of agency, which is therefore practically similar in both countries.

Title IV. Contracts.

Here considerable variations occur, chiefly because of Statutes modifying the English Common Law which do not apply to Scotland. The more correct Scottish term is "Obligation", which however is wider than the English "contract", including also promises, agreements, and duties of imperfect obligation. In Scotland there is no division into contracts by record, specialty and simple contracts; debts have no priority in respect of having been constituted by deed, though certain debts are privileged in administration⁵⁾ and in bankruptcy. As to contracts of record, or registered judgments, in Scotland they do not of themselves bind the real estate of the party. To effect this, there must be a further process ending with adjudication, but this can be had without any preliminary action if the debt is liquid (*i.e.* constituted by obligation in writing), and the decree in this process is itself a conveyance to the execution creditor. This largely corresponds to the English writ of *elegit*. The effect of this process and its analogies to the contract of record are too wide to deal with here; they are fully expounded in Graham Stewart's *Law of Diligence*, p. 576, *et seq.*⁶⁾ As to special contracts constituted in England by writings under seal there is no seal required to a deed in Scotland and the distinction is therefore chiefly between written and unwritten contracts. Again, in Scotland, all contracts and obligations whether constituted by deed or not are valid without a consideration. A contract therefore cannot be impeached on the ground that no onerous consideration is proved. In England a promise, when not contained in a deed under seal,

¹⁾ Bell's Principles 41.

²⁾ Sweet Law Dict.

³⁾ 53 & 54 Vict. c. 39. s. 9.

⁴⁾ Bell's Pr. Chap. VI.

⁵⁾ As funeral and testamentary expenses, servants' wages etc.

⁶⁾ See also Brodie-Innes *Comparative Principles of the Laws of England and Scotland*, p. 609. for full comparison.

is not binding without a consideration; in Scotland a seal makes no difference¹), and promises however made are effectual though gratuitous. There is no doctrine of estoppel as to proving by parol that a statement contained in a deed is mistaken or untrue, but a writ (that is a writing) can only be taken off by another writing, and this applies to everything written, whether in a deed or not. There is in Scotland no merger, as of a bill of exchange by a bond, and novation (which is the extinguishment of a debt by a new contract) only operates when the new security is expressly taken in satisfaction of the old; otherwise it is deemed corroborative²). There is no difference as to time of prescription between debts secured by deed and debts not so secured. But on the other hand, bonds and other deeds securing liquid debts which contain a clause of registration have a great advantage, inasmuch as diligence is summary (*i.e.* judgment can be signed and execution had at once without any action³). Contracts which in Scotland are required to be in writing are of three classes, *viz*:

1. *Attested* (which are nearly similar to attested documents in England).
2. *Holograph*⁴), which are wholly or in part written by the party himself or adopted by him as holograph. They are held equivalent to attested writings in affording proof at once of authenticity and deliberate intention. They do not however prove their date, except against the party founding on them.
3. *Privileged*, such as documents *in re mercatoria*⁵), *i.e.* bills, notes, cheques, orders, mandates, guarantees, receipts, accounts, and letters *in re mercatoria*.

Besides the proof, it is essential to an obligation in Scotland that there should be a deliberate and voluntary consent, and purpose to engage⁶); therefore there must not be on the one hand, nonage, disease or imbecility, nor on the other, error (in essentials), force and fear, or fraud⁶). The principle on these points is the same as in England, but on account of the non-necessity of consideration, or of a seal, the evidence of consent, and of the absence of these circumstances that would nullify it, become more important and the rules are therefore more highly elaborated.

Some contracts in Scotland, especially where there is a strong presumption in favour of the debtor in consequence of delay or negligence on the part of the creditor, or where the claim is inconsistent with the ordinary rules of business, require written evidence, and parol is excluded. So a promise to pay money can only be proved by written evidence unless it is less than £100 Scots (£8. 6s 8d). An obligation regarding heritage (other than a lease for a year), verbal contracts of service for more than a year, loans of more than £100 Scots, discharges, renunciations of right, contracts that have suffered any of the shorter prescriptions, all these can be proved only by written evidence or by reference to the oath of the other party if written evidence is not forthcoming, or is insufficient. This oath is given orally in open court, the English affidavit being almost unknown in Scotland. The proving of a contract by writ or oath as it is called is peculiar to Scotland⁷).

In regard to the remedies for breach of contract, as there are in Scotland no separate courts or separate systems of law and equity, so there is not the distinction between the legal remedy of damages and the equitable specific performance; the same court administers both, and the following rule obtains. An obligation *ad factum præstandum*, *i.e.* to do some specific act, may be specifically enforced if it is capable of being specifically performed, but if the party refuses to perform his obligation, or performance becomes impossible, damages only can be awarded. One result of the somewhat irregular origin of the action for specific performance in England is that the Courts of Equity couple the principle of compensation for the part of a contract which cannot be fulfilled with decree of specific performance of the remainder. This combination is said to be unknown in Scotland⁸). Thus on the sale of lands a description by measurement entitles the purchaser to get the quantity described and no more. Any valid objection on the ground of error entitles him to give up the

¹) Bell's Lect on Com. 1, 30; Ersk III, 2, 7; titles to Land, Art. 1868 & 78.

²) Ersk III, 4, 22.

³) Graham Stewart's Law of Diligence, 370—416.

⁴) 4 Stair 42, § 6.

⁵) Ersk III, 2, 24.

⁶) Bell's Com. 7th ed. 1, 313.

⁷) See Dickson on Evidence 538—634; 110—233; Kirkpatrick on Evidence ss. 94, 110, 140.

⁸) *Stewart v. Kennedy*, 15 App. Cas. 75, at p. 102. 17 R. (H. L.) 1.

purchase¹⁾. But if there is a deficiency and no warrantee he has only two defences: viz: misrepresentation and fraud or substantial error²⁾. If he reject the land he may claim damages, but he cannot retain the land and claim compensation. This is the Roman *actio quanti minoris*, which is fully accepted by the Courts of England, but only to a very modified degree in Scotland. It was assumed in Scotland that the true theory of this action was the discovery of some latent defect in the title or quality of the goods sold when it had become impossible to restore the condition of things before the sale or "when matters were no longer entire"³⁾.

With regard to moveable property it used to be said in Scotland that the *actio quanti minoris* did not exist, but in the case of ships and fixed machinery which could not be returned after being used, the purchaser had a remedy in the form of this action and could recover so much in the way of damages as would enable him to put the subject in repair or compensate him for loss of profits⁴⁾. The Sale of Goods Act 1893⁵⁾ to some extent assimilated the laws, for by s. 11 "In Scotland failure by the seller to perform a material part of the contract of sale is a breach of contract which entitles the buyer within a reasonable time after delivery to reject the goods and treat the contract as repudiated or to retain the goods and treat the failure to perform such material part of the contract as a breach which may give rise to a claim for compensation or damages." Also "where there is a breach of warranty by the seller or where the buyer elects or is compelled to treat any breach of condition on the part of the seller as a breach of warranty the buyer is not by reason only of such breach of warranty entitled to reject the goods: but he may: a) set up against the seller the breach of warranty in diminution or extinction of the price, or b) maintain an action against the seller for damages for breach of warranty"⁶⁾. Again "As regards Scotland a breach of warranty shall be deemed to be a failure to perform a material part of the contract"⁷⁾. By this enactment the Common Law of Scotland is radically altered but it is not made identical with that of England. The clause gives the buyer an unqualified right to treat the contract as repudiated or to affirm the contract and put forward a claim to diminution of price but the clause does not entitle the buyer to do two inconsistent things. If he makes his election to treat the contract as repudiated he cannot recall his election and set up a claim for breach of warranty⁸⁾. Broadly speaking we may say that in Scotland the right of rejection of goods was larger than in England and the principle of compensation for damages for breach was much more restricted. The Sale of Goods Act 1893⁹⁾ puts compensation and damages on the same footing as regards Scotland. Breach of warranty amounts to failure to perform an essential part of the contract, and as such gives rise to a claim for compensation or damages.

The Sale of Goods Act 1893¹⁰⁾ throughout as regards England draws a distinction between the terms Condition and Warranty. No such distinction is recognised in Scotland, either in the Common Law or in the sections of the Act referring specially to Scotland. In Scotland every material term is a condition, whether such as would be called warranty in England or not, and the rule has been that where the buyer can reject the goods he cannot sue for compensation or damages.

Even yet the law is far from clear either in England or Scotland; the distinction between condition and warranty, though constantly insisted on, is as constantly ignored both by judges and text book writers, and the defective classification of conditions causes frequent confusion¹¹⁾; and in Scotland it is still doubtful how far the buyer retaining the goods may have compensation or damages for breach of a material part of his contract.

¹⁾ *Hannay v. Barzaby's Trs*, Mor 13,234; *Gray v. Hamilton*, Mor "Sale" App. 2.

²⁾ *Mackenzie v. Girvan*, 3 D. 318; *Robertson v. Rutherford*, 4 D. 121.

³⁾ *Loult's Trustees v. Highland Ry Co.*, 19 R. 791.

⁴⁾ *Ib.*

⁵⁾ 56 & 57 Vict. c. 71.

⁶⁾ *Ib.* s. 53.

⁷⁾ *Ib.* s. 62.

⁸⁾ *Electric Construction Co. v. Hurry & Young*, 24. R. 312.

⁹⁾ Sec. 11 (2).

¹⁰⁾ Sec. 62.

¹¹⁾ See per Lord Abinger in *Chanter v. Hopkins*, 4 M. & W. at p. 404; per Erle, C.J. in *Bannerman v. White*, 31 L. J. C. P. at p. 32; per Williams J. in *Behn v. Burness*, 32 L. J. Q. B. at p. 206.

A very important point in which Scots law differs from English in the enforcing of contracts is the effect of the lapse of time in annulling the contract or barring the legal remedy. The word prescription is commonly used to denote this type of restraint, but it bears quite a different interpretation in England and in Scotland. In the former it strictly applies only to the extinction by lapse of time of certain rights in incorporeal hereditaments¹⁾, which as it is said "lie in grant", but in Scotland it signifies the extinction by lapse of time of any debt, claim, or title of any kind, and also the extinction of the right of action founded on a debt, whether the claim itself is extinguished or not. The English word "limitation" is occasionally used by some recent writers²⁾, but long established custom still sanctions the word prescription. The leading Scottish Statutes are 1617, c. 12 and 37 & 38 Viet. c. 94, s. 34. The technical term prescription having such a far wider scope of meaning in Scotland than in England has come to be elaborately divided and classified. In the first place it is positive and negative³⁾, the former being a mode of protecting property from challenge owing to the proprietor's length of possession and the latter being conversely the cause of the loss of a right by neglecting to follow or use it during the period legally laid down with reference to that particular right. The negative prescription is the nearest approach to the English limitation, but differs in many respects.

The Scottish negative prescription is divided into the long or forty years' period, which gives stability to heritable rights and extinguishes all adverse claims without regard to offer of proof — and the shorter positive prescriptions which merely extinguish a certain instrument as a ground of action but leave the debt unaffected, so that it may still be proved *aliunde* (as by writ or oath).

The periods in Scotland are formed on the decimal system; 40, 20, 10, and 5 years being the leading periods, 7 and 6 years having been introduced for special purposes, and 3 years being a short period peculiar to the law of Scotland specially introduced in 1579 for wages, tradesmen's accounts, etc. As to title to land there must be in Scotland an *ex facie* good title followed by 40 (or now 20) years peaceable possession; the root of title is then protected from challenge, but no length of time will protect a squatter from being ousted if he has no other title than mere possession. In Scotland, however, incorporeal heritable rights (such as a servitude (*Anglice* easement)⁴⁾ a claim to a pew⁵⁾, a right to dam a stream⁶⁾, and such like) will be protected by immemorial possession without any *ex facie* title, but no blocking of a public road for any length of time will confer a right to block it⁷⁾. Five years in Scotland⁸⁾ (as six in England)⁹⁾ is the typical period within which an action must be brought to enforce moveable or personal rights. The Scottish period of 10 years is for the accounts of tutors and curators (guardians)¹⁰⁾ and the 7 years' period is for cautioners (the Scottish term for sureties)¹¹⁾. It may be noted that the Scottish contract of cautionry is held to contain an implied condition limiting its duration to 7 years¹²⁾. The Scottish period of six years applies only to bills and notes, and was introduced in order to assimilate the mercantile law of the two countries¹³⁾, since these instruments were governed by the ordinary six years' period in England introduced by 21 Jac. I, c. 16. The short 3 years' prescription is peculiar to Scotland and refers to wages, spuilzie (or the unlawful taking of a man's goods against his will), tradesmen's accounts, bills of costs etc., introduced by the statute 1579 c. 81 s. 83 under the name of "House Maills, Servant's Fees, Men's Ordinars, and Merchants' Compts".

There is a difference also to be noted in the time from which the prescriptive period commences. In Scotland this is not the time at which the cause of action

1) *Wilkinson v. Proud*, 11 M. & W. 33.

2) E.g. Bell's Pr.

3) Ersk. 111, 7.

4) *Neilson v. Sheriff of Galloway*, Mor. 10,880.

5) *Magistrate of Hamilton v. Duke of Hamilton*, 8 D. 844.

6) *Hunter & Aitkenhead v. Aitken*, 7 R. 510.

7) *Stewart, Pett & Co. v. Brown Bros.*, 6 R. 35.

8) 1669 c. 3.

9) 21 Jac. I c. 16, s. 3.

10) 1669 c. 9.

11) 1669 c. 10.

12) Ersk. 111, 7, 24.

13) 12 Geo III c. 72, made perpetual by 13 Geo III c. 18.

accrued, but the date of the contract or writing sued on; thus in the vicennial or twenty years' prescription applicable to holograph writings, the time is counted from the date of the writing, not the date for payment¹⁾, the quinquennial or five years' prescription from the making of the bargain²⁾; the septennial (applicable to cautioners) from the making of the Bond of Cautionary³⁾; the short triennial prescription peculiar as we have seen to Scotland, is counted from the last furnishing of goods⁴⁾.

The periods as we see differ considerably, the Scottish being as a rule shorter, and the question naturally arises whether a claim barred in one country can form the ground of action in the other, if the period has not elapsed. The guiding principle is thus laid down by Lord Brougham. "Whatever relates to the nature of the obligation *ad valorem contractus* is to be governed by the law of the country where it was made, the *lex loci*. Whatever relates to the remedy by suits to compel performance, or by an action for breach *ad decisionem litis* is to be governed by the *lex fori*, the law of the country to whose Courts the application is for the performance or for damages"⁵⁾. Generally with regard to all commercial contracts with very few exceptions the period relates to the remedy, and must be settled by the law of the country where the action is brought. Some prescriptions may, however, enter into the contract *ab initio* and define its duration, the only well marked example of this being the Scottish septennial prescription of cautionary obligations; in this the surety only contracts to be bound for seven years, and then to be freed from his obligations. This therefore applies to any Scottish contract of cautionry, entered into in Scotland and sued on in a foreign country, but not to a contract of suretyship entered on elsewhere, and sued on in Scotland⁶⁾.

The running of the prescriptive period is prevented by disabilities and interruptions, and here too there are some important differences. Of the English statutory disabilities minority alone is a disability by statute in Scotland. In England to be valid as a plea minority must exist at the time of the accrual of the cause of action, and when once the statute has begun to run nothing can stop it. But in Scotland minority suspends the running of the statute only while it actually exists. That is to say the years that have elapsed before the minority (and the period of gestation if it exists) are counted together with those that elapse after the pursuer has attained the age of twenty-one, and the full prescriptive period bars the action. Minority is not deducted in actions of cautionry, or in the triennial prescription of merchant's accounts⁷⁾.

In England coverture and insanity are statutory disabilities and are considered on the same footing with minority; in Scotland they are not statutory, and could be pleaded as disabilities only on the plea of *non valens agere*, which is only admitted in very special cases⁸⁾.

There may also be in Scotland, as in England, judicial interruption to save the statute, or interrupt prescription. The rules in Scotland are as follows: If the Writ of Summons be merely signetted and not served it has probably no effect in interrupting prescription. If it is served and the action is not called, it is current for seven years, and the prescription does not run for that period; if called and no further proceedings taken, it is current for forty years. The effect of citation is that if this step be taken even a few hours before the close of the prescriptive period, it preserves to the party suing the power to bring his action until the effect of such step is exhausted⁹⁾.

Either fraud or a trust will considerably modify or prevent the operation of prescription: this is the case in both countries. In Scotland no misapplication of a fund or non-fulfilment of a trust can be fortified by long usage so as to form a defence to an action for enforcing due administration, or due execution of the trust¹⁰⁾. But with regard to accounts between guardian and ward, though English Equity looks

¹⁾ M. 10. 992.

²⁾ 1669 c. 9.

³⁾ 1695 c. 5.

⁴⁾ 1 Bell Com. 331. Ersk 37, 17. Dick Ex. 277.

⁵⁾ *Don v. Lipman* (1837) 3 Sch. & M. L. 682. 5. CC. & 7 l.

⁶⁾ Ersk 111. 7. 24; 1 Bell Com. 358; *Scott v. Zuille* (1831) 5 W. & S. 436; *Alexander v. Badenach* (1843) 6 D. 322.

⁷⁾ Brodie-Innes, Comparative Principles, 329.

⁸⁾ See *Murray v. Watkins*, 62 L. J. N. S. 796.

⁹⁾ See Mackay, Practice of the Court of Session.

¹⁰⁾ *Thain v. Thain*, 18 R. 1196.

on this as a trust and holds that no lapse of time will prevent the ward from claiming an account and restitution, Scots law holds all accounts between tutors and curators and their respective pupils and minors to be satisfied if ten years have elapsed since the close of the guardianship¹).

Particular classes of contracts are variously grouped by different writers, and the English arrangement into contracts of record, specialty, and simple contracts does not as we have seen hold in Scotland. The classification adopted in Bell's Principles, which is based on Roman Law, is fairly logical and exhaustive:

1. Sale of goods (see *post*, Title IX).
2. Contract of Hiring.
3. Contract of Loan.
4. Pledge and Deposit; these two last so far as necessary, will be treated under the head of Banking (*post*, Title VI).
5. Contract of Mandate and Factory, or Agency (see Title III).
6. Cautionary Obligations (see Guaranties *post* Title VII).
7. Bills of Exchange and Promissory Notes (see *post* Title V).
8. Affreightment.
9. General Average and Salvage.
10. Contracts of Repairs and Furnishings for Ships.
11. Contracts of Bottomry and Respondentia.
12. Contracts of Insurance (these from 8 to 12 so far as necessary are treated under the head of "Maritime Law" *post*, Title X).

With regard to 2, the Contract of Hiring, the most important points to consider arise under Carriage, as to which see Title XII. The hiring of labour does not come within the scope of this work, nor does the hiring of land. As to the hiring of moveables the sole point of divergence important enough to be noticed is that in Scotland where there is loss total or partial the *onus probandi* is laid on the lessee in whose custody the thing was at the time.

It will thus be seen that the law of contracts in fact runs through and is involved in the whole of Commercial Law. It is therefore essential under this Title to treat somewhat fully the differences between the theory of contractual obligations in England and Scotland and to expand and illustrate those differences in the succeeding Titles.

Title V. Bills of Exchange, Notes, Cheques and other Negotiable Instruments.

In spite of the obvious need for assimilating the law with regard to these, which is perhaps greater than with any other branch of the law, they still present some peculiarities in Scotland which must be noted. In both countries their distinguishing privileges are two in number:

1. The legal title to the property represented by the instrument is effectually transferred by the delivery of the instrument; in other cases the instrument is merely evidence of the debt.
2. The holder if he has taken it in good faith has a title independent of his predecessor's title and free from all defences available against him.

In Scotland corporations may contract by the signatures of their office bearers or agents duly appointed for the purpose and therefore the technical difficulty which sometimes arises in England in consequence of the rule that corporations can only contract under their common seal does not arise. Local authorities in Scotland may issue negotiable instruments under the provisions of the Local Government Act (Scotland) 1894, and the Local Authorities Loans (Scotland) Acts 1891 and 1893.

With regard to prescription also there are some points of difference. Thus, the effect of the lapse of six years is not to destroy the remedy by action as it would be in England, but to destroy the special character of the bill or note as such, and leave it merely a written order or promise to pay a certain sum. The debt in respect of which the bill or note was given remains and may be sued for, but after a lapse of six years the proof thereof is limited to a writing of the debtor or his oath²). The effect of interruption of the prescriptive period on bills in Scotland is not so clear as it is in England. Whether it merely enables the holder of the bill to complete

¹) 1669 c. 10.

²) *Blain v. Horn*, 21 D. 45; *Eastern v. Henshaw*, 1 R. 23.

after six years an action or diligence begun before (*i.e.* preserving the right only to him who has been vigilant enough to commence proceedings for its enforcement) or whether it bars the statute for all purposes and starts a new period, is not yet finally clear, though the mass of authority is in favour of the former proposition¹). For all negotiable instruments such as Deposit Receipts, Debentures, Coupons, Stock Certificates to Bearer, Exchequer Bills, etc., it may be assumed that the laws of England and Scotland are similar for all practical purposes²).

Title VI. Banking.

The Scottish banking system has some very important characteristics of its own needing careful study, and these cannot be understood without a brief glance at the history of banking in England and Scotland³). Broadly speaking we may say that the anomalies and the difficulties of English banking have arisen from legislative interference, the success of the Scottish system from its natural development under unfettered conditions. The creation of the Bank of England was due to the genius of a Scotsman, William Paterson of Darien Company fame⁴). It was incorporated in 1694 in consideration of the then amount of its capital being lent to Government at 8 per cent. interest; naturally monopolies were granted to it, and onerous responsibilities imposed on it. These might have been withdrawn, as was done in Scotland after a brief period, and the English banking system placed on a natural and rational footing when the Bank had attained a sound and stable position, but the poverty of successive governments made them the creatures of their powerful creditors, and kept up the exclusive privileges of the Bank of England long after there was any occasion for them, and produced makeshift legislation, resulting in the creation of some dozen or so different classes of banks, each subject to special provisions.

In 1695 the Scots Parliament established the Bank of Scotland, with a certain monopoly, and certain exclusive privileges, for the sake of giving it a fair chance as a new experiment, but to be withdrawn at the end of 21 years. Except therefore for a few diversities introduced by English statesmanship the Scottish banks have grown up from the beginning unhampered by legislative inequalities, and in unfettered competition. There are now in Scotland three classes of banks, viz:

1. The chartered banks, which are limited by the charter of their incorporation.
2. Chartered banks formerly unlimited, but now registered under the Companies Act 1879, and
3. Banking Companies incorporated and registered under the Companies Acts, 1862—1880⁵).

The three old and original chartered banks are The Bank of Scotland established under special Acts of Parliament, The Royal Bank of Scotland, and the British Linen Bank; these alone do not put the word "Limited" after their names. The Commercial Bank of Scotland Limited and the National Bank of Scotland Limited are registered under the Companies Act, 1879. Of the others the North of Scotland Bank Limited is now amalgamated with the Town and County Bank Limited, and the others, *viz.* the Union Bank of Scotland Limited, the Clydesdale Bank Limited, and the Caledonian Bank Limited, now taken over by the Bank of Scotland, make up the roll of the Scottish Banks. All of these have the power of issuing notes and carrying on all types of business usually included in the term banking. All of them have spread their branches over Scotland so thoroughly that there is practically no district unprovided for, and most towns have at least three or four representative branches of the Scottish banks. Their dealings with the public are regulated by tariffs drawn up in concert and adjusted from time to time by mutual consent; thus there is practical uniformity, and no particular reason as far as terms are concerned why a customer should favour one bank rather than another. The competition between them though keen is therefore on absolutely equal terms, and unhampered by legislation.

¹) *M'Lachlan v. Thomson*, 9 Sh. 753; *Main v. Wilson*, 1 D. 722; *Paxton v. Forster*, 4 D. 1515; *Ray v. Campbell*, 12 D. 1028; but see *Milne's Trustees v. Ormiston's Trustees*, 20 R. 1028, indicating some change of opinion on the Bench.

²) On the whole subject of negotiable instruments in Scotland see Gloag and Irvine, "Rights in Security".

³) See "History of Banking in Scotland", A. W. Kerr.

⁴) "William Paterson, His Life and Trials", S. Bannister.

⁵) Our Scotch Bank, W. Mitchell, S. S. C.

But while English banking has followed the financial prosperity of the country, and become (in spite of crippling legislation) one of the most extensive and wonderful financial organisations in the world, Scottish banking has undoubtedly created the financial prosperity of the country, developing its resources till from almost hopeless poverty it has reached its present state of prosperity.

Space will not permit of our tracing the history and developments of Scottish banking. We can only mention that the monopoly of the Bank of Scotland was first broken by the Royal Bank of Scotland, chartered in 1727, after a severe struggle by the older bank to retain its privileges, both having the right of issuing notes; and in the following year the Royal Bank introduced the now well known and distinctive feature of Scottish banking called "Cash Credits"¹). Scotland at that time was exceedingly poor and many industrious and capable men were prevented from exercising their powers for want of capital. The only way in which the industry and intelligence of the country could be fully utilised was by the operation of credit to increase business. The urgent necessity then was some system of lending money without tangible security, in reliance on the respectability of the applicant, guaranteed by two or three responsible persons. The banks had, so to speak, a large fund of credit which was not exhausted by the commercial bills then in circulation, and the scheme of cash credits was devised to get this surplus credit into circulation for the benefit of the industries of the country. A cash credit is in fact an inverse drawing account. It is a drawing account on which the customer may operate precisely as if it were an ordinary account, only instead of receiving interest on the daily balance at his credit, he pays interest on the daily balance at his debit. It is obvious therefore that the system has the advantage that a trader can invest the whole of his capital in his business, and yet can be able, on proper security being given, to draw such small sums as he may require for any emergency, paying only a moderate rate for the accommodation, and paying only for the amount actually drawn²). The security is a Cash Credit Bond which, proceeding on the recital that all the grantors have obtained a credit for a specified sum with a particular bank in the name of one of their number, they bind themselves and their heirs jointly and severally to repay to the bank up to the specified sum, such sum as may be due to the bank on the account including interest³). It is obvious that among other advantages the Cash Credit Bond directly encourages care and thrift in the conduct of business, since a man pays only for the exact amount of accommodation he actually has; also his co-obligants naturally keep a watchful eye upon his proceedings.

On account of the poverty of Scotland at the time of the commencement of banking, as now understood, the chief function and chief benefit of the banks was in lending money, with or without tangible security. A brief consideration of the securities ordinarily current is therefore essential. These naturally fall under heritable securities, securities over moveables, personal securities and securities over ships, which last will be treated under the head of "Maritime Law" (*post* Title X).

With regard to heritable securities the Bond and Disposition in Security is very like the English Mortgage⁴), but with this important difference as regards banking, that it cannot be made available as a security for any further sum of money to be advanced upon it after the date of the recording of the Sasine⁵). Thus the English Mortgage to secure a debt and future advances has not a precise equivalent in Scotland. It is a common practice to open an account in the debtor's name with reference to the loan and place the amount contained in the Bond and Disposition in Security to the credit of that account, then to draw a cheque withdrawing the whole amount and place it to an account current, the loan of course being kept inoperative⁶). A certain amount of inconvenience is naturally caused by the operation of this rule of law, to remedy which the Credit Bond and Disposition in Security was devised and sanctioned by 54 Geo. III, c. 137, s. 12, re-enacted by 19 & 20 Vict. c. 91, s. 7, whereby heritable securities may be given for cash accounts, or for the relief of cautioners in cash accounts, on condition that the principal sum and interest to become due under

¹) See MacLeod's Theory and Practice of Banking.

²) Wallace and M'Niel, Banking Law.

³) For form of Bond, see Juridical Styles, Vol. II, p. 380.

⁴) For forms, see Juridical Styles, Vol. I.

⁵) *Dunbar's Case v. Abercrombie*, M. 1156; 2 Ross, L. C. 632.

⁶) Wallace and M'Niel, 181.

the bond is limited to a certain definite sum to be specified in the security, not exceeding the amount of principal and three years' interest at five per cent.

Another form of heritable security commonly used in Scotland, and more elastic than either of the foregoing is by a disposition absolute on the face of it, but qualified by what is known as a back bond or back letter, from the debtor to the creditor, accepted by the latter, and stating the conditions entitling the debtor to a reconveyance of his property, which may be that the debtor shall be entitled to demand such reconveyance on condition of repaying everything he owes the creditor at the date of the demand¹). By this means banks can safely make advances to their customers so long as a safe margin of security is left over the heritable property. These various devices to secure the banker in making advances to a customer willing to pledge his heritable property are rendered necessary by the Scottish system of land laws, which is more purely feudal than that of England, and prior in date to any idea of banking or of utilising the land as a fund of credit.

The English equitable mortgage by deposit of title deeds does not exist in Scotland. Title deeds are simply regarded as moveables, and only such moveables as would fetch a price in open market are the subject of pledge. Title deeds in Scotland are not regarded as the "sinews of the land"; therefore they have no intrinsic value, and cannot be pledged so as confer a right of possession to the estate which could compete with that of the creditor who has acquired his right from the pledgor for valuable consideration. The Court of Session therefore does not recognise a claim to retain title deeds in security for a loan²). Probably however a banker in Scotland would be safe in making advances to a customer against the deposit of title deeds of heritable property situated in England.

As to securities over moveables, these may be divided into corporeal and incorporeal as in England, and with regard to the latter there is but little difference from the law of England, save that the assignee of a chose in action can in Scotland sue thereon in his own name³). But with regard to corporeal moveables it is to be noted that the familiar English bill of sale is not available in Scotland. Moveables in the possession of the debtor cannot as a rule be made the subjects of security. There is no process whereby the furniture in a man's house or the goods in his warehouse can be assigned so as to constitute a good and valid security, so long as he remains in ostensible or actual possession thereof. Until 1893 advantage could be taken of the Mercantile Law Amendment (Scotland) Act 1856, s. 1 of which declared that where goods were sold but not delivered, they should no longer be open to the diligence of the seller's creditors, or pass to his trustee in bankruptcy⁴); this in practice introduced something very like a bill of sale without the protection of registration, and produced many inconveniences. The section was repealed by the Sale of Goods Act, 1893. Under this the property in goods sold may pass to the purchaser without delivery, but this does not extend to any transaction in the form of a contract for sale which is intended to operate as by way of mortgage, pledge, charge, or other security. Where therefore there has been a *bona fide* sale out and out the purchaser can assert his right to the goods, even though they remain in the seller's possession. But an *ex facie* sale not followed by delivery, and proved to have been intended as a security only, does not give the nominal purchaser any right to the goods on the bankruptcy of the seller⁵). Moveable machinery in a mill may possibly, it is thought, be made the subject of security, while remaining in the possession of the debtor, but the matter is very doubtful.

The kind of moveables most usually made the subject of security to a bank are such as belong to the debtor, but are in the custody of a third person. These are transferred by means of a delivery order.

The forms and rules of delivery order are the same in both countries. As to incorporeal moveables, such as personal bonds for payment or performance, bonds of caution, bonds of guarantee, bonds of relief, bonds and assignations in security of any kind, decrees of any court, policies of assurance of any assurance company

¹) *National Bank v. Union Bank*, 13 R. at 409.

²) *Christie v. Buxton*, 12 D. 1182.

³) *Pattisons' Trustees v. Lis'ou*, 20 R. 806, *Liddell's Trustee v. Warr & Co*, 20 R. 986.

⁴) *Robertson v. Hall's Trustee*, 24 R. 120.

⁵) Transmission of Moveable Property (Scotland) Act (1862) (25 & 26 Vict. c. 85); see forms given in the Act.

or association in Scotland, whether held by parties resident in Scotland or elsewhere, protests of bills or of promissory notes, dispositions, assignations, and other conveyances of moveable or personal property or effects, translations, and retrocessions, and probative extracts of all such deeds from the books of any competent court; these may be assigned in a simple and effectual manner either by a separate writing, or by an assignation of the bond or conveyance itself; this must be duly stamped and intimated, the essential being intimation; — until intimation there is no complete transference. So an assignation first intimated is preferred to one prior in date but posterior in intimation. There are two ways in which intimation can be made:

1. By a notary public delivering a copy certified as correct to the person to whom intimation has to be made.
2. By the holder of the assignation or any person authorised by him, transmitting a copy thereof, certified as correct, by post to such person.

Policies of life assurance are often assigned in security to a bank, the assignation being expressed to be for certain good and onerous causes and considerations. This enables the bank to hold the policy in security for the existing debt and future advances¹); if it were expressed to be for a special consideration, or specific sum, the bank would be unable to hold it in security for future advances. The assignation of a policy confers no right on the assignee till notice of the assignment has been given in writing to the company at its head office. The date of notice to the company regulates the priority of claims²).

The assignations in security of shares, debentures, or bearer bonds do not differ in any essential feature from the assignment of the same in England.

It remains to notice a few special points on the general relation between a bank and its customers, wherein the law and practice of Scotland differ from those of England. As to the evidence of bank books — in both countries the entries for the receipt of money in the customer's pass book duly authenticated by the bank officials are *prima facie* evidence against the bank, but, apart from pass books, entries in a banker's own books are in England regarded as evidence against him³), but in Scotland a customer is entitled to found on the entries contained in the bank books to his credit, while the entries to his debit are not admissible in favour of the bank. When bank books are called for as productions in legal proceedings their admissibility in evidence is regulated by the Banker's Books Evidence Act, 1879, which applies to both countries⁴).

As to a customer's acceptances, cheques etc., there is practically no difference. But with respect to the appropriation of payments in the case of trustees, if a trustee pays trust money into his private account and mixes it with his own, afterwards drawing cheques on the mixed fund, he is presumed in England to be drawing his own money in preference to the trust money, and in the event of his death or absconding the beneficiary or *cestui que* trust would have a preferable claim on any sums in the banker's hands⁵). But in Scotland the mixed fund in a question with the bank would pass to his creditors unless it was so earmarked in his bank account as to be clearly traceable⁶).

The annual balance of books is a custom both in England and Scotland, and the balance to the debit or credit of the customer, with the interest if there be any, is carried to a new account. There is at present no interest allowed in Scotland on current accounts; if there were it would fall to be added, and become thenceforth principal bearing interest. It was judicially stated that "The privilege of a banker to balance the account at the end of the year and accumulate interest with the principal is founded on this plain ground of equity that the interest should then be paid, and because it is not paid the debtor thenceforth becomes debtor in the amount as a principal sum itself bearing interest"⁷). But in the event of insolvency the bank is entitled to go back to the balance immediately preceding and to charge interest from that date⁸).

¹) *Nelson v. Gordon*, 1 R. 1093; *Wylie v. Lochhead v. Hornaly* 16 R. 908.

²) *Forbes v. Robb*, 21 D. 79; *Borthwick v. Scottish Widows Fund*, 2 M. 595.

³) *Simon v. Ingham*, 2 B. & C. 65.

⁴) *British Linen Bank v. Thomson*, 15 D. 314.

⁵) *Knatchbull v. Hallett*, 13 Ch. D. 696.

⁶) *Macadam v. Martins Trs.*, 11 M. 33.

⁷) *Per L. P. in Reddie v. Williamson*, 1 M. 228.

⁸) *Gilmour v. Bank of Scotland*, 7 R. 734.

By the Pupils Protection Act, 1849¹⁾, every bank wherein money shall have been lodged on behalf of pupils, absent persons, and persons under mental incapacity is bound once at least in every year to accumulate the interest with the principal sum, so that both shall thereafter bear interest together as principal, and this appears to apply to all moneys lodged under authority of any court in Scotland, or with reference to any suit in Scotland.

A specially distinguishing feature of Scottish banking is the note issue. Formerly in Scotland the power of issuing bank notes was looked on as a common law right, not only of the banking corporations, but of individuals, and limited only by their credit with the public. Some companies issued notes for ten shillings, five shillings, and less; there have even been notes for a penny. But by the Bank Charter Act 1844²⁾, and the Bank Notes (Scotland Act 1845³⁾, the issuing of bank notes in any part of the United Kingdom was confined to bankers, and by s. 5 of the latter Act it was enacted that all bank notes to be issued or re-issued in Scotland must be expressed to be, under certain penalties, for payment of a sum in pounds sterling without any fractional parts of a pound. It is not lawful for any bank in Scotland to have in circulation upon the average of a period of four weeks a greater amount of notes than the amount of its authorised issue plus the amount of the monthly average of gold and silver coin held by such bank at its head office or principal place of issue during the same period of four weeks⁴⁾.

It is to be noted also that bank notes, whether of any of the Scottish banks or of the Bank of England, are not a legal tender in Scotland. They are not subject to the sexennial prescription, but it is presumed though not decided that they are subject to the long negative prescription.

There seems no doubt that the characteristic one pound note has been of enormous advantage to Scotland, and that the note issues founded on the credit of the banks gave the first impetus to Scottish trade, enabling the banks to extend their advances in proportion to the wants of the people. The increase of national wealth would render the note issues less absolutely necessary, but the people continued to use the notes practically as much as ever. The banks extended their operations into country districts, which they could only do by means of note issues.

We may therefore say that the chief characteristics of Scottish banking by means of which its unique position has been won and by means of which it has been so largely influential in developing the wealth and securing the prosperity of the country are its system of note issues and of cash credits and its frank recognition of the principle of granting advances in proper cases and utilising its credit for the support of Scottish trade and industry. It has thus developed in accordance with the national character unhampered by legislation or by any political considerations.

Title VII. Stock Exchange.

There is only one point of difference between England and Scotland that need be noted, which is that with regard to the members the cardinal feature in England, *viz*; the division into brokers and jobbers is known only in London, and is not recognised in Scotland. Apart from this the Stock Exchange Rules, the obligations and rights of brokers, and their relation to customers, are in all essential points identical, and English cases are usually the ones quoted in any stock exchange case in the Court of Session.

Title VIII. Guaranties.

As we have seen the Scottish analogue of this is the Contract of Cautionry⁵⁾; the obligation being that on failure of the principal to perform an act the cautioner will do so. At one time cautionary obligations were purely gratuitous, and a cautioner could not legally stipulate for any reward, but this would not be so held now⁶⁾. Most of the differences and discrepancies between English guaranty or suretyship and Scottish cautionry were done away with by the Mercantile Law Amendment (Scot-

¹⁾ 12 & 13 Vict. c. 51.

²⁾ 7 & 8 Vict. c. 32.

³⁾ 8 & 9 Vict. c. 38.

⁴⁾ 12 Geo II, c. 72, s. 39.

⁵⁾ Ante p. 639.

⁶⁾ This is proved by legal recognition of bonds of guarantee associations.

land) Act, 1856¹). Thus though formerly cautionary obligations might in some cases in Scotland be made verbally and the contract was not considered as *literarum*, yet now by s. 6 of the Act writing is essential. In the case of a cautioner to or for a firm, he is discharged by any change in the firm; this was provided by s. 7 of the Act, repealed and re-enacted in a more drastic form by the Partnership Act, 1890 (53 & 54 Vict. c. 39). Formerly in Scotland a cautioner was entitled to have the principal debtor compelled by legal process to perform his obligation so far as the creditor could enforce it. This was called the benefit of discussion, but by s. 8 of the Act the right is taken away and the law assimilated to that of England. By Scottish Common Law a surety on payment is entitled to have an assignment of the security. In this case it was the English Mercantile Law Amendment Act, 1856, that assimilated the English law to the common law of Scotland.

Prior however to the Mercantile Law Amendment Acts in both countries the principles of the law of guaranty were very nearly identical²). Yet there still remain some distinctions which need attention, all the more so from the close similarity. It must always be borne in mind that the contract is strictly an accessory one: it is not an independent obligation, but is strictly conditional on the failure of the principal debtor to fulfil his bargain; therefore it follows that there must be a principal debt or obligation to which the cautioner's obligation is accessory. It is clear also from this principle that if the leading obligation be null the cautioner's obligation fails also. It does not however follow necessarily that the principal debt must be exigible at law. Following in this instance the Roman Law it is held in Scotland that it is a sufficient foundation for the cautioner's obligation that the principal debtor should be bound by a natural obligation, *i.e.* morally though not legally³). So a contract by a minor who has curators without their consent, or by a married woman without her husband's consent⁴), though not enforceable at law, are both good as a foundation for a cautionary obligation.

There are certain benefits and legal peculiarities about the contract of cautionry (the sexennial prescription for instance) making it very essential to know for certain whether a contract is one of cautionry or not, and to distinguish it from other forms of contract that are somewhat like, such as independent obligations; thus if two come into a shop and one buys and the other to get him credit promises the seller "if he does not pay you I will" this is a guarantee, it must be in writing and it prescribes in seven years in Scotland; but if he says "I will see you paid" with no condition, this is an independent contract⁵). Again if the cautioner by undertaking his obligation exonerates the principal debtor or extinguishes the debt this is not cautionry, it is novation in Scotland. So a contract of indemnity is not a cautionary obligation. Again the contract of a *del credere* agent is like but not similar to a contract of cautionry. A mandate to lend money or give credit was considered by some of the older institutional writers to be a contract of cautionry⁶). But the more modern view seems to be that as between the so-called cautioner and the creditor a regular contract of mandate is an independent and not an accessory contract, and consequently not cautionary⁷).

The classes of cautionry are distinguished according as the creditor is, or is not, a party to the contract, or where there is no express contract, but a primary and secondary obligation for the same debt, as in the case of bills of exchange. There is no practical difference between the laws of England and Scotland as to these.

With regard to the capacity to contract cautionary obligations — this is in both countries the same as the capacity to enter into any other kind of personal obligation, but is applied with greater strictness. The differences in this respect between the laws of England and Scotland are to be noted, especially with regard to the two cases of married women and infants. In Scotland at Common Law a married woman is incapable of being a cautioner⁸), even though she has a separate estate, and this

¹) 19 & 20 Vict. c. 60.

²) Per Lord Eldon in *Grant* (1818) 6 Dow's App. at p. 252.

³) Ersk. Inst. III 3. 64.

⁴) *Buchanan*, 6 S. 986.

⁵) *Birkmyr v. Darnell*, 1 Sm. L. C. 10 Ed. 287, approved and followed by Court of Session in *Selkirk* (*Stevenson's Tr.*), 33 S. L. R. 503.

⁶) Ersk. Inst. III 3. 61.

⁷) Lord McLaren's Note, *Bills Com.* 1401.

⁸) *Biggart v. City of Glasgow Bank*, 6 R. 470.

is still the case notwithstanding the Married Women's Property (Scotland) Act 1881¹). A minor who has no curators or who acts with the consent of his curators may be a cautioner, but after he attains 21 he can reduce the obligation within four years on the ground of minority and lesion, *i. e.* that he was damaged thereby, and the presumption of lesion will be much more readily entertained in the case of a cautionary obligation than on any other²).

As to the form of the contract under the English Statute of Frauds, or the Scottish Mercantile Law Amendment Act — this may be by any writing which imports a promise by one party to answer for the debt, default, or miscarriage of another who is liable in the first instance. The law looks not so much to the form as to the real intention. There must be offer and acceptance and the two parties must agree *ad idem*. But with regard to the proof of the contract there seems to be a little divergence. For the tendency of the Scots Law has undoubtedly been to insist on much greater solemnity than has been the case in England, and in practice it has become the general rule to require that the writing should be either holograph, or authenticated according to the terms of the old Statutes. The Mercantile Law Amendment (Scotland) Act simply necessitated that any writing constituting a cautionary obligation shall be in writing and subscribed by the person undertaking the obligation, but it does not decide whether in any given case the signature is enough, or whether it needs to be probative in the old Scottish sense. This therefore must be settled by the rules in force before the Act. The question is whether the writing is required for the purpose of proof or as a matter of solemnity. There are undoubtedly weighty authorities on both sides³). But for our present purpose there is no need to consider the question, for in all mercantile guaranties a writing signed merely by the guarantor or his agent is sufficient being *in re mercatoria*; also if there has been *rei interventus*, that is to say if the contract has been acted on in an unequivocal way by the creditor, it is binding though not authenticated in the statutory manner. The provisions of s. 6 of the Mercantile Law Amendment (Scotland) Act are practically the same as those of the English Statute of Frauds and Lord Tenterden's Act, and the intention was undoubtedly to assimilate the law of the two countries; the English decisions are therefore applicable⁴). In England it has been held that the names or a sufficient description of the contracting parties must appear *ex facie* of the document⁵), but in Scotland a guaranty is not void by reason of the creditors not being named⁶). It is sufficient if the writing be signed by the person to be charged or his agent, and parol evidence is admissible to prove that the surety really signed the document and in what capacity he signed it. Therefore if the document be neither holograph nor tested according to Scottish law and practice the creditor must be prepared to prove the genuineness of the signature and that it was adhibited to the document as it stands⁷).

The conditions precedent to a cautioner's liability, whether under the agreement or implied by law, and the extent of the cautioner's liability, may be taken to be practically the same in both countries and therefore need no special comment. Reference may be made to what has been said on English law on this subject. As to the rights and privileges of cautioners the chief of these by Scottish Common Law are the *beneficium ordinis*, known as the benefit of discussion (now taken away) and the *beneficium divisionis*. That is when several cautioners are bound conjunctly for the debtor, each of them is in the first instance, and so long as his co-cautioners are solvent, liable only for his own *pro rata* share of the debt⁸). But in what is termed an improper cautionary obligation, where the cautioners are bound as debtors themselves, conjunctly and severally with the principal debtor, there is no *beneficium divisionis* and the creditor may go against any one of the cautioners for the whole debt⁹).

¹) *Jackson v. Mc Diarmid*, 19 R. 528.

²) *Stair I* 6, 44; *Bell Com.* I 135.

³) See for example, *Dickson on Evidence*, s. 600 (3); *Bell's Pr. s.* 249; *Lord M'Laren's Note*, *Bell's Com.* I 407.

⁴) Per Lord Blackburn in *Walkers Trs.*, 7 R. (H.L.) 85.

⁵) *Williams*, 29 L. J. Q. B. 1.

⁶) *Clapperton*, 8 R. 100 4.

⁷) *Wylie & Lochhead v. Hornsby*, 16 R. 907.

⁸) *Ersk. III*, 3, 63; *Bell Pr. s.* 267.

⁹) *Richmond*, 9 D. 633.

The case of bankruptcy of any of the parties requires notice. If one of the cautioners is bankrupt, the debtor and other cautioners being solvent, the creditor can if he pleases rank on the estate of the bankrupt creditor for the full amount of the debt if it is an improper cautionary obligation (*vide supra*) or for the bankrupt's proportional share if it is a proper obligation, i.e. if the cautioners were bound *simply* as cautioners and not as principal debtors¹⁾. If the principal debtor is bankrupt and all the cautioners are solvent the creditor may rank on the bankrupt's estate for the whole debt and claim the balance, after the payment of the final dividend, from the cautioners²⁾. When the principal debtor and some of the cautioners are bankrupt and the other cautioners are solvent the creditor may either rank for the whole debt on each of the bankrupt estates and recover what he can, claiming only the balance from the remaining solvent cautioners³⁾ or he may recover the whole debt from the solvent cautioners and leave them to claim what they can from the principal debtor and the solvent cautioners⁴⁾. Where the principal debtor and all the cautioners are insolvent the creditor has a right to rank for the whole debt on the estate of each of the bankrupts⁵⁾. The obligation of the cautioner may be brought to an end by direct discharge; by the fulfilment of the contract; by the cautioner's revocation of his obligation and with regard to this there is a difference between the laws of England and Scotland in the case of caution or guarantee for the due performance by an official of the duties of his office. For in Scotland a cautioner of this description may put an end to his obligation on giving reasonable notice to the employer or creditor, of course taking care to have his bond delivered up to him or cancelled⁶⁾, but in England where a continuing relationship is constituted on the faith of a guaranty there is reason for holding that the guaranty cannot be annulled during the continuance of the relationship⁷⁾. The obligation may also be brought to an end by the death of the principal debtor or of the creditor; by any act of the creditor injurious to the cautioner; by the alteration of the contract by the creditor or by the creditor giving time to the principal debtor or releasing the principal debtor or a co-cautioner, or giving up or losing securities. All of these are practically similar to the same causes of discharge in England.

The septennial prescription of cautionary obligations has already been mentioned. It only remains to show the exceptions to the Act, the cases that is where relief on a cautionary obligation is not barred after the lapse of seven years, such as bonds of caution in any sort of judicial proceeding⁸⁾, in a confirmation⁹⁾, a composition contract¹⁰⁾, a marriage contract¹¹⁾, a contract *ad factum prestandum*¹²⁾, for the faithful discharge of an office¹³⁾, a bond of relief¹⁴⁾ or corroboration¹⁵⁾ or a cash credit bond¹⁶⁾ or an action for relief by one cautioner against another¹⁷⁾.

Title IX. Sale of Goods.

The Sale of Goods Act 1893¹⁸⁾ was intended to codify and assimilate the law of the United Kingdom. There are still, however, some important differences between the laws of England and Scotland, in spite of the wide changes introduced thereby into the law of Scotland. It will perhaps be simplest to notice those sections only of the Act wherein a difference occurs, assuming that otherwise the laws are similar.

1) Bell Com. 1. 368; *Garden v. M'Iver*, 22 D. 1190.

2) *Hamilton v. Cuthbertson*, 494.

3) *Martin's Trustees v. Robertson's Jud. Factor*, 20 R. 72.

4) Bell Com. 1. 371.

5) *Royal Bank of Scotland*, 8 R. 805, at 817.

6) Bell Com. 1. 384.

7) *Lloyds v. Harper*, 16 Ch. D. 290, at 306.

8) *M'Kinlay* (1781) Mor. 2154.

9) *Gallie*, 15 S. 647.

10) *Cuthbertson*, 2 Sh. 292.

11) *Stewart*, Mor. 110 10.

12) *Robertson*, ib.

13) *Bremner*, Bell's App. 280.

14) *Bruce*, Mor. 11033.

15) *Scot*, Mor 11012.

16) *Alexander*, 6 D. 322.

17) *Forbes*, Mor 11014.

18) 56 & 57 Vict c. 71.

Goods now in Scotland pass not only by delivery, as formerly, but by contract, if that was the intention of the parties¹). By sec. 2 a minor is bound to pay for necessities sold to him, but in Scotland, if the goods are suitable to his condition, the seller need not enquire whether they are otherwise supplied²). Sec. 8 so far as it authorises the fixing of a reasonable price alters the previous law of Scotland, under which a fixed price was an essential on sale³); also proof of the payment of the price differs, for in Scotland parol evidence is only competent in ready money transactions or where the amount is under £8, 6, 8; in all other cases written evidence only is permitted⁴). In sect. 11 (2) where the seller fails to perform a material part of the contract the buyer in Scotland is in a better position now under the Act than the buyer in England, for he has his choice of two remedies; he may keep the goods and claim damages, or he may reject the goods and rescind the contract. The latter alternative, which arises under the common law of Scotland and is not affected by the Act, does not exist in England⁵).

Sections 16 to 26 deal with transfer of property, risk, and title; — as to these subjects the wide changes introduced by this Act into the law of Scotland have already been noticed, and the full effect of them is not even yet clear. The old law was based on the maxim that the property in moveables is presumed from possession. There was thus no room for the doctrine of reputed ownership, save between competing owners neither of whom has a valid independent title. Where reputed ownership was recognised it created a right in favour of the creditors of the possessor not affected by proof of a latent contrary right.

This whole question of the passing of the property in goods without the transfer of actual possession and of reputed ownership is exceedingly difficult, and involves considerable differences between the laws of England and Scotland which are far from being satisfactorily settled yet. In one case in Scotland before the Act of 1893 it was stated from the Bench that “the doctrine of reputed ownership is no longer of much importance”⁶). But since the Act it has been seriously considered whether the statutory reputed ownership, which has for centuries been part of the law of England, should not be extended to Scotland. Again, as we have seen, a transfer of property without transfer of possession does not apply to any transaction intended to operate as a security. But the law on this subject cannot be said to be at all well settled even yet⁷). In England a security over goods of which the pledgor retains possession is protected by stringent conditions as to registration under the Bills of Sale Acts, which do not apply to Scotland.

There is a peculiarity in the case of unfinished ships. In England the property in these may pass to a lender of money on the security of the ship, without being taken from the stocks, and with no delivery and no registration⁸). This was considered to be the original law in Scotland also⁹) but now, since the repeal of the M. L. (Scotland) Amendment Act, 1856, no effectual security can be given over a ship without actual change of possession. With regard however to absolute transfer, not for security, it is now quite clear that by the law of Scotland if people choose so to contract they can pass the property in a thing which is being sold without delivery. There is not the slightest difficulty in so framing a contract if it is wished as between the shipbuilder and the person who is buying the ship, that the property in a gradually constructed ship shall be held to pass at certain stages, but if so it must be clearly said¹⁰).

The seller's duty of delivery and the buyer's duty of acceptance and payment are now under the Act identical in England and Scotland, save only that as regards quality if the buyer's option of rejection is properly exercised the result is the same as if the seller had failed by non-delivery. He has delivered something, but not the

¹) Sec. 1; *James Laing & Sons Ltd v. Barclay Curle & Co Ltd* [1908] S. C. (H of L) 1.

²) Ersk. I 7. 33. In England he must take his risk, *Barnes v. Toye*, 13 Q. B. D. 410. The word “Minor” is misleading.

³) Stair I. 14, 1; Ersk III. 3, 4; Bell Com. 461.

⁴) See Report of Mercantile Law Commission (1855) 2d Report p. 7 (5).

⁵) See *Louttit's Trustees*, 19 R. 791, for comment on *Actio Quanti Minoris*.

⁶) *Robertsons*, 9 R. 772.

⁷) See Brown, Sale of Goods Act, 276 *et seq.*

⁸) *Ex p. Hodgkin*, L. R. 20 Eq. 746.

⁹) *Sampson*, Mor. 14204.

¹⁰) Per Lord Dunedin in *James Laing & Sons Ltd v. Barclay Curle & Co Ltd*. [1908] S. C. 72.

article contracted for, and the buyer's remedy is in damages for non-delivery, not for breach of warranty¹). As to instalment deliveries²), *e.g.* in supplies of iron or coal, see Brown on the Sale of Goods Act, p. 148, *et seq.* One restriction on the alternative remedies of the seller in Scotland must be noted. When the property in the goods has not passed and the price is not payable on a day certain irrespective of delivery, the seller has only the remedy of damages under the Act³); previously he had the option of suing for the price so long as he could offer the goods, or retaining the goods and claiming damages⁴). If the property has passed he may either sue for the price, or retain the goods and sue for damages⁵).

In Scotland the Act retains the previously existing right of the seller to recover interest on the price⁶). This does not exist in England unless the contract was in writing and the price payable at a certain time⁷). The Scots law proceeds on an implied agreement by the person in default to pay for the use of the money improperly retained by him⁸).

If the buyer elects to accept goods he might have rejected, and only to claim damages, he may in an action for the price of the goods be required in the discretion of the Court to consign or pay into Court the price or a part thereof or to give other reasonable security for due payment. This is an important safeguard in Scotland. In both countries it is a common fraud to retain the goods, and set up breach of warranty against an action for the price.

The landlord's right of hypothec or sequestration for rent in Scotland is specially retained⁹). This should be kept in view in any dealings regarding moveables which belong, or may have belonged, to a tenant in Scotland. Hypothec is defined as "a real security over a particular class of subjects allowed to remain in the possession of the debtor". Herein it differs from lien, in which it is essential that the thing over which the security exists should be in the possession of the creditor. In England the only example of this type of security is the bottomry and *respondentia* bond, in Scotland there are several implied by law, whereof the landlord's security for his rent over the tenant's moveables is one. A buyer in Scotland should therefore make sure that no claim for hypothec attaches to the goods. Formerly this hypothec attached to every species of tenancy, but by the Hypothec Abolition (Scotland) Act 1880¹⁰) hypothec was abolished on agricultural lands, though still retained on urban property¹¹). It extends over all moveables brought on to the premises¹²) *e.g.* household furniture, the goods for sale in a shop, and the moveable machinery and stock in trade of a manufactory. Bills, cash, notes, and ordinary wearing apparel are exempt¹³). Sale and delivery excludes the right of the landlord. Sale without delivery under the Sale of Goods Act passes the property, but passes it subject to the landlord's hypothec in urban properties. This should always be kept in view in dealing with goods in Scotland. With regard to goods hired by the tenant the law is far from certain and the decisions are conflicting. This branch of the subject is too intricate for discussion here. The landlord may make his hypothec effectual by retaining the goods on the premises; or¹⁴) attaching them by sequestration; a buyer therefore who purchases without taking delivery is exposed to this risk.

Finally it is to be noticed that the Sale of Goods Act does not apply to incorporeal moveables, such *e.g.* as debts, and other rights of action, shares in a private partnership, shares or stock in a public company, and rights connected with patents, copy-rights, and trade-marks; with regard to these therefore the old Scots law as existing before the Act still applies.

There is still therefore a considerable difference between the laws of England

¹) That is, his remedy falls under sec. 51, not sec. 53.

²) Sec. 31.

³) Sec. 50.

⁴) Bell Com. I. 472.

⁵) Secs. 49 & 50.

⁶) Sec. 49 (3).

⁷) Mayne, Damages, 5th Ed. 162; Bell Com. I. 692, 694.

⁸) Sec. 59.

⁹) Sec. 61 (5).

¹⁰) 43 Vict. c. 12.

¹¹) An urban lease is one in which the rent is mainly paid for buildings; Ersk. II 9, 6.

¹²) *Invecta et illata*.

¹³) Bell Pr. 1276.

¹⁴) 18 D. I.

and Scotland in regard to incorporeal moveables important enough to need a brief summary in this place. Sale of these subjects is equivalent to the English "agreement to sell"; the property itself can only pass by delivery, which is the implement of the contract technically known as "sale". The method of delivery must in each case depend on the nature of the property and the circumstances of the transaction, but it must in every case be some formal action, which places the subject under the complete control of the buyer. As to offer and acceptance, if the offer is made by A to B direct, and B asks time to consider, which A agrees to, A is bound in Scotland to wait for the full time; the reverse is the case in England, because it is a *nudum pactum*, and he has received no consideration, and even if no time for acceptance is mentioned he would still it is thought be bound to wait a reasonable time¹). Where the seller of incorporeal moveables in Scotland fails to perform any material part of the contract the buyer's only remedy is to reject the goods and rescind the contract, unless there be a defect in title or quality, discovered when matters are still entire, in which case the action *Quanti Minoris* is still competent²). Cases of warranty of incorporeal moveables implied from the purpose for which they are purchased must necessarily be of rare occurrence, but are still possible, *e.g.* shares in a private company might be supposed to carry a commanding voice on some other concern and be bought for this purpose, but no warranty can be gathered from the circumstances tending to show that the seller knew the purpose for which the shares were required; this is now the case for corporeal moveables, but not for incorporeal, unless the purpose be expressly stated.

Writing is essential to the transmission of incorporeal rights although only relating to moveables³). But in regard to this it is necessary to distinguish what is merely a *jus exigendi*, as a debt from strictly incorporeal personal property, such as shares, patent rights, copyrights, and trade-marks. In the case of debts a contract without writing is absolutely void; either party has a *locus poenitentiae* and may repudiate the contract without any penalty. But in the case of pure incorporeal personal property such as shares, patent rights, and the like, a personal contract may exist without writing, but the shares, rights or whatever may be the subject matter of the contract cannot pass without delivery, and delivery in these cases can only be effected by writing. With regard to ships, which are always a peculiar class of property subject to their own laws, the statutory regulations were anciently very strict and there could be no contract without writing⁴); even at the present day no title can be completed to such property without writing and registration, but a valid personal contract may be made by word of mouth. The English theory of a beneficial title separate from the formal legal title has been for many years gradually gaining ground in Scotland, and has done much to assimilate the law of the two countries. Thus in a recent dispute between a purchaser of shares in a ship and a mortgagor who claimed that the shares had revested in him, the Court held that even if the mortgagor had the formal title to the shares, the purchasers had the beneficial right in them and that to enable them to cure the defect in their formal title they were entitled to a decree ordaining the registrar to register the necessary instruments⁵). In patents also there has been an admission of equitable and beneficial interests⁶). On the other hand a mere verbal contract for the assignation of a debt creates no legal obligation.

In the case of shares in a joint stock company a verbal contract for their sale is perfectly valid, but the buyer has no vested right until the transfer has been executed and registered in the books of the company⁷). A share in a partnership is transferred from seller to buyer without the necessity for any intimation. Copyright is effectually transferred by an ordinary conveyance, if all the statutory conditions are duly fulfilled⁸). If the Articles of Association of a joint stock company prescribe certain formalities the shares do not vest on a sale until these have been observed, but all the same the contract remains valid as between the parties thereto.

¹) 18 D. 1.

²) As to this action, see *Louttit's Trustees*, 19 R. 791.

³) Dickson, Evidence, S. 560.

⁴) Merchant Shipping Act, 1894, ss. 5 & 57.

⁵) *Duthie v. Aitken*, 20 R. 241.

⁶) 15 & 16 Vict. c. 83 s. 35; 46 & 47 Vict. c. 59, s. 87.

⁷) *Wilson*, (1856).

⁸) *Orr's Trustees*, 8 M. 936.

Title X. Maritime Law.

With regard to this subject the position appears to be that the laws of the two countries are in effect practically similar, but for the most part they are based on decisions and not on Statutes, and though each country looks with respect on the decisions of the other there is no obligation to follow them, and in practice this is not always done. Lord President Inglis said "To cases decided in England on a branch of law the principles of which are the same in England and Scotland we are always inclined to give and we do give great weight, although they are not strictly binding on us"¹). The freedom of the Scottish Courts was asserted by Lord Young, who said "The only authority cited to us as against the law which I have indicated was a case before two judges of the Queen's Bench. I think that case was not in point, but if it were I should not assent to it"²).

The best method therefore of dealing with this branch of the subject seems to be to recount very briefly the heads of shipping law, indicating the decisions thereon of the Court of Session and the principles governing the same, wherewith may be incorporated all that has been said before concerning shipping law in England.

The contract of affreightment is that whereby the shipowner agrees to carry goods in his ship for reward. It may be made between the shipowner and one person who hires the use of the ship by a charter-party, or between the shipowner and a number of persons who ship goods and contract by bills of lading. Affreightment, charter-parties, and bills of lading, therefore fall to be considered together. The charter-party and the bills of lading are usually identical in their terms but if they vary the charter-party prevails³). The shipmaster or captain is technically responsible for the vessel throughout the entire voyage and the owners are bound by his actions, whence originally he had very wide and uncontrolled powers, but in these days of rapid and easy communication he would seldom undertake a serious responsibility without consulting his owners. Erskine says⁴), "The shipowners' obligation is truly grounded on the mandate which is presumably given by the executors (owners) to the master whom they set over the ship, to contract in their name for whatever may be necessary for upholding her in a condition fit for service". The master has no right to vary the charter-party by signing bills of lading of a different import, but where he has express instructions to sign bills of lading as presented he must do so. A clean bill of lading both in England and Scotland means a bill in the ordinary style without any special exception and nothing in its margin qualifying the words in the instrument itself. Lord President Inglis held, however, that the phrase had no technical meaning, and was not a legal phrase at all. The master in signing bills of lading acts as agent for the charterers, not for the owners.

The first obligation of the owners is to provide a seaworthy ship. Clauses are often introduced relieving the owners from responsibility for the negligence of the crew, but these are of no avail if the ship was not originally seaworthy⁵). The charterer tenders the cargo, and there is a point at which the owners take charge of it. Everything before the commencement of loading is the charterer's responsibility; everything after that is the shipowner's. And the charterer is liable though the dock is full at which he desires to load⁶), and he has to wait for it, or though foreign holidays intervene⁷); still, though it is impossible to load, he has to pay demurrage for not doing so. Even the lawful orders of the authorities of a foreign port do not free the shipowner. Thus the loss to a ship through unexpected detention by quarantine falls on the owners⁸). Any custom or practice of a particular port which the charterer cannot by reasonable diligence overcome ought to be taken into consideration. Lord President Inglis said that though he did not hold that the master was bound by the custom of the port in discharging his cargo, still the custom of the port was a material fact in the case⁹).

¹) *Salveson v. Gray*, 13 R. 85; see also *Currie v. McKnight*, 24 R. H. L. 1.

²) *Aven Steamship Co. Ltd v. Leask & Co.*, 18 R. 280.

³) 1 Bell's Com. 590, M'Laren's Ed.

⁴) Inst. III. 3, 43.

⁵) *Steel & Craig v. State Line Steamship Co.*, 4 R. 657 & 4 R. H.L. 103.

⁶) *Dall Orso v. Mason & Co.*, 3 R. 419; *Bremner v. Burrell*, 4. R. 934.

⁷) *Holman v. Peruvian Nitrate Co.*, 5 R. 657.

⁸) *Whites v. SS. Winchester*, 13 R. 524.

⁹) *Hillschom v. Gibson & Clark*, 8 Macph. 463.

The route is laid down for the shipmaster, and he has no power to deviate from it except for the safety of the ship; any other deviation is *ultra vires*.

The business of the master of a seaworthy ship is to proceed to his destination as speedily as he can¹). If a change be necessary from stress of weather or other cause the authority to make the change is in the master alone. Neither the charterers nor the indorsees of bills of lading can authorise a deviation²), nor, it seems, does the knowledge of the charterers that a deviation is intended make any difference.

The owners are further bound to deliver in good condition the goods shipped, and difficult questions arise as to when delivery actually takes place, the custom of the port, if there is one proveable, must be taken into consideration, or if there is no custom goods are held to be delivered when they are so completely in the customer's hands that he has sole control of them³). Therefore if part of a cargo is lost by careless passing of it to the quay, the owners are liable. Putting the cargo on the ship's rail or merely swinging it over the rail is not delivery in any reasonable sense. It must be placed outside the ship in a place at which and from which the consignee may take it.

Questions also arise as to the term "dead weight". It is sometimes guaranteed in a charter-party that the vessel shall carry not less than a certain "dead weight", and should the vessel not carry the said dead weight a *pro rata* deduction per ton shall be made. In the case of *Mackill v. Wright*⁴) the stipulated dead weight could only be carried by stowing machinery and coals together, which was wholly improper without the consent of the owners of these articles. Under these circumstances the House of Lords held that as the owners had provided a vessel capable of carrying the stipulated dead weight, and as the short shipment was due to the charterers providing a cargo more bulky than was contemplated by the parties, the charterers were not entitled to any deduction from the full freight. The English case of *Carnegie v. Conner*⁵) should be compared with this, as some of the *dicta* indicate a clear difference of principle.

In old times these liabilities were qualified by the phrase "the dangers of the seas excepted"⁶) but within the last century this has been expanded into what is now known as the "negligence clause". What are perils of the sea and what are perils of the ship has been much discussed, and the interpretation in England and Scotland may be considered to be precisely similar. The modern clause⁷) excepts also errors or negligence of navigation of whatsoever nature or kind during the voyage. The interpretation of this clause in Scotland is illustrated by two cases⁸) against Messrs Colvils Lowden & Co in regard to the Steamship *Ethelwolf*, lost through a breakdown consequent on muddy water in the boilers. The Second Division held that muddy water had been put into the boilers before the commencement of the voyage, that the vessel was consequently unseaworthy when she started, and that the clause of exemption did not apply and the owners were liable. In an action by another owner of cargo, the First Division held that the failure was due to the water having been allowed to run too low, and the boiler plates having contracted unevenly the boilers leaked, and this loss was therefore due to an error in navigation, and within the "negligence clause" and the owners were not liable. It is to be observed that in the two cases the circumstances were precisely the same, but the evidence of the cause of the disaster was different. These cases and others are fully and carefully considered in the *Juridical Review*, Vol. 1 p. 155, to which reference should be made. It is the duty of a master when an injury has been caused to cargo by an excepted cause to repair by all means in his power the injury that has been done⁹). The neglect of this plain duty does not fall within the exceptions of the charter-party.

¹) *Donaldson Brothers v. Little & Co.*, 10 R. 413.

²) *Strickland & others v. Neilson & Mackintosh*, 7 Mac. 400; compare English case *Davies v. Garrett*, 6. Bing 716.

³) *British Shipowners Co. Ltd v. Grimond*, 3 R. 968; *Avon Steamship Co Ltd. v. Leask & Co.*, 18 R. 280.

⁴) 14 R. 863; 16 R. (H of L) 1.

⁵) 24 Q. B. D. 45; *Mackill v. Wright* was not cited in the English Court.

⁶) *Abbott's Shipping*, 257.

⁷) See for form, *Scrutton*, 287.

⁸) *Seville Sulphur & Copper Co Ltd v. Colvils Lowden & Co.*, 15 R. 616; *Cunningham v. Same*, 16 R. 295.

⁹) Per Lord Inglis in *Adam v. Morris*, 18 R. 853.

Charter-parties often contain what is termed a cesser clause, that is that the charterer's liability is to cease as soon as the cargo is shipped. This clause in the opinion of Lord President Inglis¹⁾ discharges the charterer of all liability both before and after the time of shipping the cargo, and on the other hand it gives the captain an absolute lien on the cargo for demurrage²⁾ and freight which would otherwise have accrued against the charterer. In short the charterer's personal liability is extinguished and a lien over the cargo is substituted for it. The acceptance of bills of lading in terms of the cesser clause relieves the charterer from all liability under the charter-party, but only under the charter-party; if there is any other liability not resulting from this it still continues. Thus the bill of lading may import a new contract under which the charterer is liable³⁾.

The obligation of the shippers or owners of goods shipped is to pay freight; if the goods are delivered in a damaged condition the shippers may recover damages against the shipowners, or the charterers can retain freight; but if the damage is covered by the conditions and exceptions in the bill of lading the onus of proving negligence is on the owners of the goods. Thus if the bill of lading contains a stipulation that the shipowner is not answerable for breakage, this exception discharges him from all liability for breakage in his capacity as carrier, but leaves him under the common law liability as custodian, and the onus of proving negligence on the part of a custodian lies on the owner of the goods⁴⁾.

The obligation of the consignees or indorsees of the bills of lading is to accept as binding against them for the purposes of freight the statements in the bills of lading. So if there is an exception in the bill of lading that shipowners are not responsible for weight, quality, leakage, or breakage; and goods such as oil casks are delivered in a leaking or leaked out condition, the onus which would have lain on the shipowners to show that this condition was not brought about by their fault is shifted, and it lies on the consignees to show that the condition of the goods was caused by the fault of the shipowners⁵⁾. If the shipmaster grants a bill of lading for goods which he has not received on board the shipowner is not responsible⁶⁾.

If the port of discharge is in Scotland then the law of Scotland is the law of the *forum* and regulates the proof. Thus goods were sent in a Danish ship to Scotland, and were deficient in quantity when delivered. It was averred that the full quantity was not received at the port of shipment, though specified in the bill of lading. Danish law makes the bill of lading conclusive and it was argued that therefore the indorsees were entitled to retain the value of the deficiency from the freight. But by the law of Scotland the bill of lading is not conclusive against the shipowners as to the amount of cargo shipped and therefore the indorsees only became indorsees for the cargo actually on board the vessel and were not entitled to retain any part of the freight⁷⁾.

It has however been held in an English case that where a charter-party provides that the bill of lading shall be conclusive evidence against the owners of the quantity of goods received as stated in the bill of lading, the owners are estopped, when suing for freight, from denying that the full amount of cargo stated in the bill of lading was in fact shipped, the charterer in this case counterclaiming for short delivery. This case would almost certainly be followed in Scotland and should be read in connection with that last cited⁸⁾.

It is common for the charterer's agents to collect freight, and it should be borne in mind that in doing so they act in fact as the owners' agents and are bound to account for the full freight, and may not without authority compromise any claim⁹⁾.

If a seaworthy vessel is wrecked before the freight becomes payable, and before the vessel could possibly have reached her destination, as where the charter-party provides that the freight shall be paid in cash one month after the ship's sailing and she could not arrive in less than six weeks, the freight is payable, for the stipulation

¹⁾ *Salvesen & Co v. Grey & Co.* 13 R. 85.

²⁾ See post "lien and demurrage".

³⁾ *Beynon v. Kenneth*, 8 R. 594.

⁴⁾ Per Lord President Inglis in *Moss Moliere & Tromp v. Leith & Amsterdam Shipping Co.*, 5 Mac. 988.

⁵⁾ *Craig & Rose v. Delargy & Co.*, 6 R. 1269.

⁶⁾ *Grieve Son & Co. v. König & Co.*, 7 R. 521.

⁷⁾ *Owners of Immanuel v. Denholm & Co.* 15 R. 152.

⁸⁾ *Leishman v. Christie & Co.*, 19 Q. B. D. 333.

⁹⁾ *Broadhead v. Yule*, 9 Mac. 883.

clearly imports payment irrespective of the completion of the voyage¹). It is improper for a master to deliver cargo without production of a bill of lading, but his doing so does not render the bill ineffective²).

Questions of time freight, dead freight and stoppage in transitu are in practice precisely the same in Scotland as in England, and as the leading cases are English they need not be specially discussed here.

The contract of bottomry (whereby, in consideration of money advanced for necessities to enable the ship to continue her voyage, the keel or bottom of the ship *pars pro toto* is made liable for the repayment of the money on her safe arrival) is now almost entirely superseded by mortgage where it is essential, and in the present days of easy and rapid telegraphic communication between the master and his owners has become practically little more than an antiquarian curiosity. Cases however still occur, and there are differences between the laws and customs of England and Scotland needing a brief notice. The form of the bottomry bond itself is different in the two countries. For the characteristic forms, reference should be made to the *Juridical Styles*, Vol. II, 5th Ed. pp. 774 to 786, where English and Scottish precedents are placed side by side.

The chief questions in Scotland have been with regard to the power of the master to hypothecate not only the vessel but the cargo, and in the event of the cargo being sold with the ship under the bond, the right of the shippers to recover, and in these cases, following generally the English cases, the Court has mostly held that the shippers could recover³).

If the loan is not repaid on the arrival of the ship at the port of her destination the remedy is by arrestment, for if the master possesses only the ordinary powers the bond does not create a personal security against the owners but only against the ship, and a personal obligation against the master⁴).

With regard to arrestment it is to be noted that the English Admiralty procedure approaches more nearly to that of the Scottish courts than probably any other part of English practice. The action in rem corresponds precisely to the Scottish Real Action, which arises from a right in the thing itself and is grounded either on the right of property, which is the highest right that one can have in a subject, or on a right of servitude, hypothec, pledge etc., which are inferior real rights⁵). Thus this procedure of which the Admiralty action in rem is the solitary English example has many analogues in Scotland, such *e.g.* as poinding of the ground. In Scotland to every action with pecuniary conclusions, *i.e.* where the claim is for money or money's worth there is an incidental power of arresting in security on the dependence of the action any goods of the defender immediately after the signeting of the summons and before service, and this includes the power of arresting ships. So that a Scottish creditor in a maritime action has in fact a greater security against the subject, the res, than he would have in England⁶). It follows from the fact that the ordinary powers of arrestment in security in the great majority of cases supply all that is necessary, that there are very few cases of maritime lien properly so called in Scotland. But if such lien should arise the creditor's right can be rendered effectual by arresting the ship under the Admiralty jurisdiction of the Court of Session or the Sheriff Court.

These principles apply also strongly to the questions of salvage and towage. Though it has recently been stated on high authority that the maritime law administered by the Court of Admiralty in England is the same as the maritime law administered by the Court of Session in Scotland⁷), it must not be forgotten that the English Courts administering that law find the action in rem, which is its most characteristic feature, an alien and unfamiliar procedure, while in Scotland it is the machinery provided by common law for the vindication of rights. So in salvage it is generally thought that in England the salvor has no title to recompense at common law⁸),

¹) *Leitch v. Wilson*, 7 Mac. 150.

²) *Pierie & Sons v. Warden*, 9 Mac. 523.

³) *Anderson Foundry Co. v. Law*, 7 Mac. 836; *Dymond v. Scott*, 5 R. 196, *Millen & Co. v. Potter Wilson & Co.*, 3 R. 105.

⁴) Bell's Pr. 452.

⁵) Ersk. IV. 1. 10.

⁶) See Brodie Innes, *Comparative Principles*, p. 708.

⁷) *Currie v. McKnight*, 34 S. L. R. 93.

⁸) *Palmer*, 3 H & N. 505.

while in Scotland he has¹⁾. At the same time the salvage cases in Scotland are few and the bulk of authority is found in the English reports. Yet it may be said that the law which is native in Scotland is in England hampered and fettered as an exotic system. As a rule ship, cargo and freight contribute in due proportion to the salvage reward. A personal action for salvage may be raised by any person entitled to a share, whether the others concur or not, and the Court will determine the amount and award the shares. The action may in Scotland take the form of a multiple poinding. Where the total value saved does not exceed £1000 or the claim £300 it must be determined summarily in the Sheriff Court²⁾. Besides the personal action a salvor has his action in rem against the ship and cargo themselves³⁾. If these are in his possession he has a proper right of retention, equivalent to the English lien over them, but if they are not in his possession he has by English law what is termed a maritime lien; this in Scotland is more properly called hypothec; it attaches to the res and may be enforced against it wherever it is, and into whosoever hands it may fall. There are few cases of hypothec for salvage in the Scottish Reports, but the principle is well established and recognised by the Institutional writers⁴⁾.

The ranking of liens or hypothecs may be of importance. The broad rule is that the last claim ranks first, as being the most likely to have been the one that saved the ship. Thus all salvage liens rank before prior bottomry bonds, and among themselves they rank in reverse order, the last being first, and they rank before liens for wages earned before the salvage, and before liens for damages by collision, but after a subsequent bottomry bond or lien for subsequent wages⁵⁾.

In the case of damage by collision, the chief difference between the two countries is that the admirable English practice of filing a Preliminary Act is not used in Scotland, but occasionally accounts of all the circumstances have been written immediately after the occurrence and sealed up for future reference. The mode of trial is the same save that assessors, though now authorised in Scotland⁶⁾, are not commonly made use of as in England. If judgment is given against the res, and the res is under arrest, it must be released or sold. The ordinary Scottish diligence against goods in the possession of the defender is by poinding, but ships are not poinded but arrested, and the arrestment is not completed by furthcoming, but by sale⁷⁾.

There is one shipping case wherein the laws of England and Scotland differ considerably, *viz*: where there is a dispute between the owners as to the management of the ship. In Scotland any one of the owners can offer his share to the others and if they cannot agree as to price the action of Set and Sale is competent⁸⁾. It may be brought like other maritime actions either in the Court of Session or in the Sheriff Court. The pursuer is the owner desirous of selling, and he calls the others as defenders. The claim is:

1. For a declaration that the defenders ought to accept the pursuer's offer to sell his shares, and if they do so that decree should be pronounced for the sum.
2. In the alternative that the defenders should sell their shares to the pursuer at the same rate and on payment of the sum deliver a bill of sale to the pursuer.
3. In the alternative if the defenders will neither buy nor sell, that the ship should be sold by auction and the proceeds divided.
4. Expenses against defenders. In England there is no such distinct action, but the same result is attained to some extent by a restraint action, in which the dissenting minority can obtain the assistance of the Court.

Title XI. Marine Insurance.

The laws of England and Scotland on this head may probably be considered to be identical. In 1877 Lord Gordon said "the systems of the two countries in regard to marine insurance are the same and the provisions of the Merchant Shipping Acts

¹⁾ Stair, 8. 3.

²⁾ M. S. A. 1894, sec. 547. Stair 8. 3. 8.

³⁾ Bell Com. I 592, II 103.

⁴⁾ Ersk. III, I. 34; Bell Com. I, 533.

⁵⁾ See M'Lachlan "Merchant Shipping" Chap. XV.

⁶⁾ 57 & 58 Vict. c. 40.

⁷⁾ Graham Stewart on Diligence, p. 242.

⁸⁾ For Procedure see Shand's Practice, p. 417.

apply equally to both"¹). But in another case in 1881, appealed from Scotland to the House of Lords, Lord Blackburn in regard to one special point said "The point seems to be a moot point not yet finally decided in Scotland and I am not going to express an opinion as to how it would be in Scots law"²).

The Scottish cases are few, but some of them are important. The following points are clearly brought out in Scotland. The underwriters in a marine policy are entitled to rely on the provisions of the Merchant Shipping Acts having been duly observed. Where there had been a fictitious sale in order to bring the vessel under another flag and avoid inspection, it was held that this avoided the policy though there was no allegation that the ship was unseaworthy when she sailed³). Frauds of this description have been more frequent of late years, and this principle may become important. The peculiarities of the Scots law of Warranty have been discussed. How far a breach of warranty vitiates a policy is illustrated in two recent Scots cases⁴). What is meant by a total loss is well illustrated in a Scottish case which went to the House of Lords, the ultimate result being that it is not necessary that the ship should be totally annihilated or destroyed if the expense of salving her would be greater than her value. Underwriters need not accept abandonment. The notice is only justified when at the time a reasonable person would think and would properly act on the notion that the ship situated as she then was, was totally lost or could not in fact be recovered without incurring more expense than a prudent uninsured person would reasonably incur⁵). This question of what constitutes total loss is one in which there is considerable difference between the law of England and that of other countries. The Scottish cases must therefore be taken into account in dealing with any such case.

In a time policy, i.e. one insuring the vessel for a certain period there is no warranty of seaworthiness⁶).

Underwriters are liable for damages caused by collision, this being a "peril of the sea" which is probably occasioned by the negligent navigation of the other vessel. A curious question arises where both vessels belong to the same owner. The underwriters have to pay the insurance on the sunken ship. Can they claim damages against the other for negligent navigation? In a Scottish case in 1877⁷) the House of Lords held (reversing the judgment of the First Division) that they were not entitled to claim on the fund, as the owner himself could not have done so, and they were no more than his assignees. This case followed an English decision⁸). Mr. Justice Vaughan said that "it would be little short of an absurdity if the underwriters should in the first place indemnify the insured for the consequences of negligent navigation under their contract, and should immediately afterwards recover the amount back from the insured as damages resulting from negligent navigation". Lord Gordon, in the same case, held that it would have been otherwise had the ships belonged to different owners. But he held the proper way to regard the case was as if the owner had not been insured at all. In such case as the owner of one ship he could have had no claim against himself as the owner of the other. And if he could not be liable to himself he could not assign any right either expressly or by implication of law to any third person, as he had none to convey.

When a vessel is being towed her underwriters are liable for a collision with the tug just as if it were with the vessel under tow. The Second Division held that in maritime usage the word ship covered both the ship and tug towing her. This decision was upheld on appeal by the House of Lords⁹).

If a ship is mortgaged the mortgagee is entitled as against the charterer to prevent her sailing uninsured¹⁰).

¹) *Simpson & Co v. Thomson & Co*, 5 R. (H of L) 40.

²) *Shepherd v. Henderson*, 9 R. (H of L) 1, at p. 14.

³) *William Hutchinson & Co, v. Aberdeen Sea Insurance Co*, 3 R. 682.

⁴) *Burrell v. Dryer*, 11 R. (H of L) 41; and *Harvey & Co. v. Seligmann*, 10 R. 680.

⁵) *Shepherd v. Henderson*, 9 R. (H of L) 1.

⁶) *Kennett & Co. v. Moore*, 10 R. 547.

⁷) *Simpson & Co. &c. v. Thomson &c.*, 5 R. (H. L.) 40.

⁸) *Yates v. Whyte*, 4 Bing. N. C. 272.

⁹) *Barrie & Johnston v. M'Cowan*, 17 R. 1016; *M'Cowan v. Barrie & Johnston*, 18 R. (H. L.) 57.

¹⁰) *Lanning & Co. v. Scaton*, 16 R 828.

Title XII. Carriage by Land.

The Scots law as to carriers is avowedly derived from the Roman Pretorian edict "*Nautae Caupones Stabularii*"¹). The word "*Nautae*" has been extended to cover carriers by land. In Scotland the edict has been adopted with certain variations²). Thus the bare act of receiving the goods lays upon a carrier, as being a person who holds himself out to the public as engaged on this occupation (as well as upon the other classes enumerated in the edict), the responsibility for the goods committed to his charge, although no neglect is proved, provided the damage or loss has not arisen from inevitable accident, the act of God, or the King's enemies³). In England the same result has been reached by the custom of the realm⁴), though in all probability it was actually derived from the Roman law through Bracton. Thus though practically identical the laws of the two countries cannot be said to be necessarily so, except where governed by Statute expressly applying to both.

The obligations of a carrier in Scotland are definitely laid down to be:

1. To provide a sufficient vehicle.
2. To pack the goods or see that they are packed securely therein.
3. To observe ordinary care and skill in the transit and the usual course of journey (not necessarily the shortest route).
4. To deliver the goods according to his undertaking⁵).

Railway companies are not common carriers of persons, so they are not liable as insurers, but they are common carriers of goods and so are subject to the above rules⁶). If an accident happens to a passenger, negligence must be proved before the railway company can be held liable. But they are liable for the negligence of all persons whose care is directly necessary for the safety of the passenger. The principles are the same in England, and the English and Scottish cases are mutually illustrative, though not binding on each other.

The liability imposed on carriers by public policy (adopting the edict *Nautae Caupones Stabularii*) in Scotland, was formerly limited only by contract express or implied. Now it is limited by legislation.

A contract limiting the responsibility could be implied from notice or from the requiring of an extra payment to compensate for extra risk. This was considered to imply mutual assent, and not merely notice. In this respect Professor Bell thinks the Scottish rule was more correct than the English⁷). The legislative enactments, however, being common to England and Scotland, these questions need not be discussed and reference may be made to the law of England for all the limitations.

One or two interesting recent Scottish cases illustrate the law relating to damage in transit. If a machine is sent by carrier and a part of it is lost, the full value has to be paid. If the machine is damaged it becomes a question of fact whether it is so much injured that the consignee is entitled to refuse delivery; if so it is not reasonable to call on the consignee (who is entitled to the delivery of a new machine) to accept delivery and content himself with being repaid the cost of repair⁸). If a firm of general carriers and forwarding agents accept goods for transit from Italy to Edinburgh and they are damaged, the firm cannot plead that they are only agents and not carriers⁹). A piano accepted by a railway company for transit from Inverness to Kirkwall by goods train and steamer via Aberdeen arrived damaged; the consignee refused to take delivery. The company contended that as there was no through fare, and as they were only entitled to hire of the carriage to Aberdeen, they were not liable as carriers beyond that point, whence the transit was by steamer, but it was held that the consignment note imported a contract by the company to carry the goods from

¹) Dig. 4, 9, 1 pr.

²) Ersk. III, 1, 28.

³) Bell Pr. s. 235.

⁴) *Nugent v. Smith*, 1 C. P. D. 19 & 423, at p. 429.

⁵) Bell Pr. 164.

⁶) Bell Pr. 160A.

⁷) Bell Pr. 244.

⁸) *Dick v. The East Coast Railways*, 4 F. 178, following and illustrating the English case of *Nettleship v. British Columbian Sawmills*, 37 L.J.C.P. 235.

⁹) *Ciceri & Co. v. Sutton & Co.*, 16 R. 814.

Inverness to Kirkwall, and they were responsible as carriers for the safe carriage thereof to Kirkwall¹).

These cases, founded on the edict *Nautae Caupones Stabularii*, follow English cases based on the common custom of the realm, and are instructive in that respect.

Title XIII. Trade Marks and Trade Names.

The law of Trade Marks in both countries is governed now by the same statute, viz. The Trade Marks Act 1905²), repealing certain sections of the Patents, Designs and Trade Marks Acts of 1883 to 1888³), which also applied to both countries, and by the Rules for the time being in force under any of these statutes. The law may therefore be taken to be practically identical, but with regard to procedure one or two points need to be noticed.

Sec. 3 of the Act of 1883, which saved the jurisdiction of the Scottish Courts was according to Lord Kineairney "very obscure".

In a petition to rectify the register by expunging a trade mark, His Lordship said "I have been informed that there is no report in our books of any petition for rectification of the Register of Trade Marks, but no objection has been taken to my jurisdiction, and I suppose there is no doubt about it this much is clear that the "Court" in the Act means in Scotland the Lord Ordinary, and the "Court of Appeal" means either Division⁴)". In the Trade Marks Act 1905⁵), section 69 saves the jurisdiction of the Courts in Scotland, enacting that in any proceeding in Scotland the term "the Court" shall mean the Court of Session. Also by s. 72 that in Scotland any offence under the Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court. It may be assumed now that no objection will be raised to the jurisdiction of a Scottish Judge, but the obscurity is not removed.

It has been held in England that a mark which had been registered as a trade mark was at the time of registration "common to the trade" because similar though not identical marks were then in use by more than three persons engaged in the same trade. This, which is known as the "three marks rule", is established by decisions of English Courts⁶). It has been strongly contended that these decisions are not binding in Scotland, and should be reconsidered as being contrary to the Trade Marks Act⁷). The point was not decided, as the pursuer's counsel did not press for any rectification of the register.

But at present it cannot be said that the "three marks rule" applies to Scotland, and the same may be said of many other points resting solely on the authority of English decisions.

A petition under Section 90 of the Act of 1883 cannot competently be presented to the Scottish Courts; the proper procedure is by Summons, this being the usual procedure in the Scottish Courts unless special power of application by petition has been conferred, which is not the case under the Act⁸).

A trade name as a rule can only be registered under exceptional circumstances, which are the same in England and Scotland. But by the common law in both countries a trader who puts upon his goods a distinctive mark or name, indicating that they have been produced or selected or made by him, may acquire by exclusive use even for a short time a property in the trade mark or trade name, which the law protects by interdict and by damages for its infringement or violation, and which may be transmitted to a purchaser or legatee. Goodwill also is intimately connected in its nature and character with trade names⁹). The question usually is whether any of the public are likely to be deceived or induced to buy the defender's goods believing them to be the pursuer's. And this, in default or definite averment of error, becomes a question of inference.

¹) *Logan v. Highland Ry. Co.*, 2 F. 292.

²) 5 Edw. VII., c. 15.

³) 46 & 47 Vict. c. 57; 48 & 49 Vict. c. 63; 49 & 50 Vict. c. 37; 51 & 52 Vict. c. 50.

⁴) *Herbert v. Cowie*, 24 R. 361.

⁵) 5 Edw. VII., c. 15.

⁶) *Wragge Trade Mark*, 29 Ch. D. 551.

⁷) *Boord & Son v. Thom & Cameron* [1907] S. C. 1326.

⁸) *Dewar v. Dewar & Sons*, 6 S. L. T. p. 120.

⁹) Bell, Pr. 1361.

Thus where the lessee of the Sun Foundry, Glasgow, removed to other premises twelve miles distant, and called the new foundry "the Sun Foundry, Glasgow", it was held in an action by the assignee of the original works that though the latter certainly had no exclusive right to the use of the name "Sun Foundry" and the defender might call his new premises "Sun Foundry, Clippens" or simply "Sun Foundry", yet "Sun Foundry, Glasgow" was likely to mislead, and an interdict was granted¹). But where an innkeeper removing from the Golden Lion Hotel, Stirling, to the Station Hotel, placed the figure of a Golden Lion on the roof, still calling it the Station Hotel, it was held that no one would be misled and interdict was refused²).

In the most recent case the Second Division, reversing the Lord Ordinary, held that the Dunlop Motor Company, Kilmarnock, had not adopted their name for the purpose of passing off their goods as the goods of the Dunlop Pneumatic Tyre Co., and that the name was not calculated to deceive the public to buy the goods of the former in the belief that they were the goods of the latter. This decision was upheld by the House of Lords, Lord James of Hereford saying "I cannot think that the average citizen of Kilmarnock would be deceived, and I cannot speculate upon the degree of unwariness that would induce the confusion necessary to support the appellant's claim³)"

These cases indicate that the common law of England and Scotland is practically the same on these points, but English cases cannot be taken as binding in Scotland, and the Scottish cases must always be consulted as far as they will go.

¹) *Cowan v. Millar*, 22 R. 833.

²) *Crawford's Trustees v. Lennox*, 23 R. 747.

³) *Dunlop Pneumatic Tyre Co. Ltd. v. Dunlop Motor Co. Ltd.* [1907] S. C. (H. L.) 15.

The Commercial Laws of Ireland.

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Introductory.

At the time of the conquest of Ireland by Henry II (1171), the Irish were governed by what they called the *Brehon* law, so styled from the Irish name of judges who were dominated "*Brehons*". After this conquest, the common law of England was introduced into Ireland. King John in the 10th year of his reign on going into Ireland ordained and established by his letters patent that Ireland should be governed by the laws of England and judges were appointed in conformity with those laws. To this ordinance many of the Irish were averse to conform, and still stuck to their *Brehon* Law, so that both Henry III and Edward I had to renew the injunction, and finally in a Parliament held at Kilkenny in 40 Edward III, the *Brehon* law was formally abolished, it being declared to be no law, but a lewd custom crept in of later times. The original method of passing statutes in Ireland was nearly the same as in England, the Deputy holding Parliaments at his pleasure, which enacted such laws as they thought proper. But ill use was made of this liberty, and in order to restrain this power, as well of the Deputy as of the Irish Parliament, the 10 Hen VII c. 22 (1495) (commonly called "Poyning's Law") provided that no bill should be introduced into the Irish Parliament unless it had previously received the approval of the English Council. Up to this time Ireland had legislated for itself. Though the common laws of England were made the rule of justice in Ireland in the reign of John, no acts of the English Parliament since that reign extended to Ireland unless Ireland was specially named or included under general words. Ireland being thus excluded from the benefit of English statutes was deprived of many good and profitable laws made for the improvement of the common law; it was therefore further enacted by another of Poyning's laws that all the then existing statute law of England should be in force within the realm of Ireland. Laws made in England between John's reign and the passing of Poyning's law did not bind Ireland, and it follows that no Acts of the English Parliament made since then, bound Ireland unless specially named or included under general words. The English Parliament legislated for Ireland from the passing of Poyning's law, but no statute applied to Ireland unless specially named or included. In 1719, Ireland was declared by a statute of the English Parliament to be a subordinate kingdom and Parliament asserted its right to legislate for Ireland, but this claim was subsequently abandoned by another statute in 1782 and the Irish legislature became independent of the English; by the Renunciation Act (23 Geo III, c. 28), the English Parliament declared the right of the Irish people to be bound only by Acts of the Irish Parliament.

Since the Union of Great Britain and Ireland (1800) every Public Act of the Imperial Parliament embraces Ireland whether expressly mentioned or not, unless that portion of the United Kingdom is excluded from its operation in express terms or by implication to be gathered from the construction of the statute (see *Reg v. Mallow Union* (1860) 12 Irish C.L.R. 35). The Act of Union did not extend to Ireland any English or British Act passed before 1800 which did not previously apply to Ireland.

The principles of both common law and equity are the same in Ireland as in England. English cases are accepted as binding authorities in the Irish Courts, but whilst the Irish Court of Appeal gives great weight to English decisions, it does not feel bound by the decision of an English Court of first instance.

I. Companies.

The Companies (Consolidation) Act 1908 (8 Edw. VII c. 69) applies to companies formed and registered in Ireland. The English Courts have no jurisdiction to wind-up companies registered in Ireland, although they carry on business and have a branch office in England (see *In re Scottish Joint Stock Trust* [1900] W.N. 114); and an Irish company having its registered office in Ireland, but having a place of business in England, cannot be served with a writ of summons within the English jurisdiction (see

Watkins v. The Scottish Imperial Insurance Co. (1889) 23 Q.B.D. 285). Companies registered in Ireland can only be wound up by the High Court in Ireland (Companies (Consolidation) Act 1908, s. 134). The Assurance Companies Act 1909 (9 Edw. VII c. 49) extends to Ireland. The Life Assurance Act 1774 (14 Geo III c. 48) was extended to Ireland by the 29 & 30 Vict. c. 42, and applies to all policies executed after the 1st November 1866. The Gaming Act 1845 (8 & 9 Vict. c. 109) also extends to Ireland. As to companies which were authorised to be formed for the purpose of working coal and other mines, or for carrying on of any trade or manufacture, etc., and also for carrying on canals or inland navigation or for assurance against casualties by fire, see "Partnership" *infra*.

II. Partnership.

The 15 Geo II c. 7 (Irish) 1741 "An Act for the better Regulation of Partnerships to encourage the Trade and Manufactures of this Kingdom" authorised not more than nine persons to enter into contracts of partnership by writing under seal for opening and working coal or other mines or for carrying on of any trade, business or manufacture by a common or united stock not exceeding £10 000 in the whole at any one time during the continuance of the partnership, etc. This Act was amended by the 11 & 12 Geo III c. 25 (Irish) 1771 and after that date, any number of persons were authorised to enter into any contract of partnership by writing under seal for carrying on any canal or inland navigation or for establishing any joint company for assurance against casualties by fire, by a common or united stock. These Acts are now practically obsolete and no modern partnerships have been formed under their provisions.

The Partnership Act 1890 (53 & 54 Vict. c. 39) applies to Ireland, but the notices etc., required by the Act must be published in the Dublin Gazette as to a firm whose principal place of business is in Ireland. The Limited Partnership Act 1907 (7 Ed. VII c. 24) and The Limited Partnership Rules dated December 17, 1907, made under sec. 17 of the Act, also apply to limited partnerships in Ireland, but the notices, advertisements etc., required by the Act must be published in the Dublin Gazette in the case of a limited partnership registered in Ireland.

III. Agency.

The Factors Act 1889 (52 & 53 Vict. c. 45) and the principles of the English law of agency apply to Ireland.

IV. Contracts.

The Irish Statute of Frauds (7 Will. III c. 12 (Irish) 1695) is still in force in Ireland and is in all important parts verbally identical with the English Statute of Frauds, but sec. 13, which corresponded to sec. 17 of the English Act, has been impliedly repealed and is reproduced in sec. 4 (1) of the Sale of Goods Act 1893 (56 & 57 Vict. c. 71), which extends to Ireland. The Irish Act was amended by Lord Tenterden's Act, 1828 (9 Geo IV c. 14 s. 7) which extended the Statute of Frauds, English and Irish, to contracts for the sale of goods of £10 and upwards although the delivery was not made, but this section was itself repealed by the Sale of Goods Act 1893, and reproduced in sec. 4 (2) of that Act. The first section of the Irish Act, invalidating leases for 3 years or more, has been repealed and replaced by the Landlord and Tenant (Ireland) Act 1860 (23 & 24 Vict. c. 154) sec. 4, which requires a Deed or Writing for the creation of any tenancy for a longer period than from year to year.

The Irish Statutes of Limitations (10 Car. I Sess. 2 c. 6 [1634] and 6 Anne c. 10 (1707) were repealed by the Irish Common Law Procedure Act 1853 (16 & 17 Viet. c. 113) and limitations for simple contract and specialty debts were enacted by sec. 20 of that Statute corresponding to those contained in the English Statutes.

V. Bills of Exchange, Notes, Cheques and other Negotiable Instruments.

By the Bills of Exchange (Ireland) Act 1828 (9 Geo IV, c. 24) sec. 6, bills accepted in satisfaction of a former debt are to be deemed full payment thereof. Sees. 13 & 14 set out the regulations etc., for protesting inland bills for non-payment or non-acceptance.

The issue of bank notes in Ireland for fractional parts of £1, is prohibited by the 8 & 9 Viet. c. 37, s. 15, and notes and bills under £5 can be negotiated in Ireland

(27 & 28 Vict. c. 20). Notaries in Ireland are not required to attend after 6 o'clock in the afternoon to receive protest of bills or notes and any bills or notes not tendered before that hour are to be considered as dishonored (The Bills of Exchange (Ireland) Act 1864 (27 & 28 Vict. c. 7). The Bills of Exchange Act 1882 (45 & 46 Vict. c. 61) applies to Ireland.

VI. Banking.

The 33 Geo II c. 14 (Irish), 1759, "An Act for repealing the 8 Geo. I, c. 14, intituled "An Act for the better securing the payment of Banker's Notes," and for providing a more effectual remedy for the security and payment of debts due by Bankers," commonly called "the Bankers Act", enacts that all deeds and conveyances executed after the 1st August 1760, by any banker or bankers, whereby any part of their real estate or leasehold interest shall be mortgaged, incumbered, or affected, shall be duly registered in the office for the public registry of all deeds within one calendar month from the time of the execution thereof as aforesaid by such banker or bankers, and that for want of such registry every such deed and conveyance as aforesaid shall be deemed fraudulent and void against all and every creditor of such banker and bankers, though made or given for valuable consideration. By sect. 3 all grants, sales, alienations, etc., made by any banker during the time he continues a banker, of any part of his real estate in trust for a child, etc., shall be utterly void as against creditors, though given for valuable consideration. By sect. 4 no banker or bankers shall, after the 10th of May 1760, give any note, negotiable receipt, or accountable receipt, with any promise for the payment of interest, and all notes and receipts by any banker or bankers with such promise or engagement for the payment of interest shall be absolutely null and void. Sect 5 makes any banker or bankers not paying their notes or negotiable receipts or accountable receipts issued or given by him or them upon demand, liable to pay interest from the time of demand. By sect. 6 receipts or discharges by any banker or bankers after stopping payment shall be void; so shall conveyances by any banker made after he has absconded or stopped payment, though made for valuable consideration. By sect. 8, after any banker shall abscond or conceal himself, or stop payment, or die, all his effects, real and personal, are to be liable for his debts without regard to priority, other than and except such debts and incumbrances as shall be secured by deeds or conveyances registered as aforesaid. These are to have force and effect as if the Act had not been made. By sect. 10, where any banker or bankers, having stopped payment, shall within three months next after such stopping of payment, by any deed or deeds, vest his or their whole real or personal estates, etc., in one or more trustees for the payment of all debts, such deed or deeds shall be valid and effectual to all intents and purposes, the estates shall stand vested in the trustees, and the banker or bankers be freed and discharged from their debts, such debts only excepted as are by this Act entitled to a preference before other debts. Sect. 11 enacts that in all such deeds to be executed by such banker or bankers after the 20th of April, 1760, the trustee or trustees therein named shall be approved of by the majority in value of the creditors of such banker or bankers, or by the Lord Chancellor, or the Commissioners of the Great Seal, or the Commissioners for hearing causes in the Court of Chancery for the time being. Sect. 8 extends to all the debts of a banker indiscriminately and is not confined to such debts as he may have contracted in his trade or business as a banker (*Hayden v. Carroll* (1796) 3 Ridg. Parl. C. 545), and deeds not registered pursuant to s. 2 are fraudulent and void against creditors at large of a banker (*Ibid*). Although a bond not registered is by the Act declared void against creditors, still the debt remains (*Ibid*). Sec. 4 of the Act is not applicable to cases of mutual dealings between a banker and his customer (*Clancarthy v. La Touche*, (1810) 1 Ball & B. 420).

This Act does not relate exclusively to persons who carry on the business of banking in the way of banks of issue, but to all bankers whatever, and it is still unrepealed except as to such specific matters in it as have been the subject of special legislation (*Copland v. Davies* (1872) L.R. 5 H. L. 358). A memorandum accompanying a deposit of deeds made as security for a debt, and made by a person carrying on the ordinary business of a banker, is within the provisions of this Act and ought to be registered to be available as against creditors under a trust deed executed pursuant to its provisions, and a deposit of deeds as security for debt accompanied by a memorandum specifying the purpose of such deposit constitutes a conveyance

under the Act, and might and ought to have been registered even though the stoppage of payment by the banker took place within one month after its date. And a trust deed executed according to the provisions of the Act will be valid for all purposes affecting the distribution of the estate of the banker among creditors, though it should be followed by a general bankruptcy (*Copland v. Davies, supra*).

It was held in *Stafford v. Henry* (1850) 12 Irish Equity Reports 400, that a stockbroker who occasionally received money from his customers and paid it out on their drafts and discounted bills, but who did not hold himself out as a banker, was not a banker within the operation of this Act, and therefore that a mortgage executed by him was not void against his creditors by reason of its not having been registered pursuant to the provisions of the Act. Down to the year 1879, P. S. carried on business as a banker or money-lender in the towns of D. A. and C. in the county of Tyrone in his own name. He had no other business. After that he carried it on with his son M. S. as P. & M. S. There was not any deed of partnership. In 1900 P. S. conveyed all his property to M. S. who, since that time, was the sole owner of the business. The firm lent money and advances were also made upon mortgages; they had also been in the habit of receiving large sums on deposit, for which they gave promissory notes payable three months after date. In 1893 they substituted deposit receipts similar in form to those issued by banks. They also lent small sums up to £5 without taking any security. They cashed "crop notes" and small American drafts. They kept no books such as are usually kept by bankers. They did not issue notes, cheques, pass-books, letters of credit, or bills on foreign or British banks and there were not any current accounts kept with the firm. Evidence was given to show that the establishment kept by S. was commonly known as S's bank and the Bank of Ireland had also called the firm "bankers". M. S. obtained advances from the Bank of Ireland with which he deposited by way of equitable mortgage the title deeds of property to secure the advances. The deposits were not accompanied by a memorandum in writing, and were therefore incapable of registration. By indenture dated 14 January 1899 M. S. conveyed all his property to trustees upon trust to realise and divide the proceeds among his creditors: *Held*: that M. S. was a banker within the meaning of 33 Geo II c. 14 (Irish) and that the mortgages created by deposit of title deeds, not having been registered, were levelled (*In re Shield's Estate etc.*, [1901] 1. Ir. Rep. 172).

The Bank of Ireland was established by Royal Charter in 1781 pursuant to the Act of the Irish Parliament (21 & 22 Geo III c. 16) on the same lines as the Bank of England and it possesses similar privileges and is governed on similar principles to it, but has no monopoly whatever. The Act contained a prohibition against the bank lending or advancing money to be secured by mortgages or sale of land, tenements or hereditaments redeemable, but this provision was repealed in 1860 by 23 & 24 Viet. c. 31 s. 1. In 1872 the Charter was amended in respect to the number and election of the directors (35 Viet. c. 5: The Bank of Ireland Charter Amendment Act.) The 8 & 9 Viet. c. 37 (1845) continues the bank's privileges until determined by twelve months' notice in the Dublin Gazette. The notes, bank post bills, and bills of exchange of the bank may be signed by machinery (27 & 28 Viet. c. 78) and a bill or note issued by the Bank of Ireland is exempt from stamp duty (Stamp Act 1891 (54 & 55 Viet. c. 39) Sched. I. Bills of Exchange. Exemptions). The Bank of Ireland acts as agent or banker of the Government for the management of the unredeemed debt inscribed in its books. Bank of Ireland notes are not legal tender except in payment of revenue (1 & 2 Geo IV c. 72, s. 5).

The 40 Geo III, c. 22 (Irish) 1800, reciting 33 Geo II, c. 14, *supra*, and that no provision is thereby made for the safety of bankers' persons who might stop payment after the 5th of March, 1762, enacts that bankers who have stopped payment since the 1st of April, 1793, or may hereafter stop payment, shall be free from arrests and executions provided they vest their property in trustees for the payment of all their debts pursuant to the recited Act, and provides that no banker shall be entitled to the benefit allowed by this Act unless the trustees in such deed named, or the major part of them, shall in writing under their hands and seals certify to the Lord Chancellor, etc., that such banker has in all things conformed himself to the directions of the 33 Geo II, c. 14, *supra*. The 6 Geo IV, c. 42 (1825) enables banking co-partnerships of more than six persons to be established in any part of Ireland and issue their notes and pay them there, and to sue and be sued in the name of a public officer, and requires a return of their members to be made to the Inland Revenue.

Co-partnerships formed under this Act, and not registered as limited or unlimited companies, must be wound-up as unregistered companies (The Companies (Consolidation) Act 1908 (8 Edw. VII, c. 69) ss. 267, 268). The 6 Geo. IV, c. 42 has not repealed the Act of the Irish Parliament 33 Geo. II, c. 14 (1759) *supra* (Copland v. Davies (1872) L.R. 5 H.L. 358).

The Irish Bank Act 1845 (8 & 9 Vict. c. 37) imposes on banks of issue in Ireland practically the same restrictions as exist in England, and the issue of bank notes for fractional parts of a pound are prohibited. The 7 & 8 Vict. c. 113, regulating joint stock banks, was extended to Ireland by 9 & 10 Vict. c. 75, but this Act was repealed by the 20 & 21 Vict. c. 49, ss 4, 5, which prohibited the future formation of banking companies in Ireland except under its provisions, and subsequent legislation up to and including the Companies (Consolidation) Act 1908, applies to Ireland.

All the joint stock banks in Ireland are now registered as limited liability companies under the Companies Acts. There are nine such banks in Ireland, six of which are banks of issue. Bank notes are not legal tender in Ireland and the negotiation in England of Irish notes under £5 is prohibited (9 Geo. IV, c. 56).

The tender of a Bank of England note is not legal tender in Ireland if objected to by the creditor, but such notes may be circulated there (8 & 9 Vict. c. 37, s. 6).

Bank Holidays in Ireland are the same as in England with the addition of St. Patrick's Day, March 17th, and if it falls on a Sunday, the Monday following must be kept as a Bank Holiday (The Bank Holiday (Ireland) Act 1903, 3 Edw. VII c. 1).

VII. Stock Exchange.

The Dublin Stock Exchange was established by an Act of the Irish Parliament in 1799 (39 Geo. III, c. 60). This Act authorised the establishment of a Stock Exchange "in the city of Dublin" subject to such rules and regulations as should be approved by the Lords of the Treasury (now the Lord Lieutenant, 56 Geo. III, c. 98, s. 15) who were empowered to issue licences to such persons only as they thought fit to be stockbrokers. Every person before such license is granted must enter into a bond of £2000 for himself which two sureties for £500 each conditioned that he will not during the time he continues to be licensed buy or sell government stock or securities for himself or on his own account when employed by any person not being a broker to purchase or sell stock, etc., and that he will keep a book containing entries of all stock etc. sold and bought by him with the name of the person to whom he sold the stock, etc., and the amount of every sale to every person, and the price at which it was sold. The Lords of the Treasury (now the Lord Lieutenant) may annul licenses. Every person acting as a stockbroker in selling or buying any Government stock etc. on commission without having taken out a license is subject to a penalty of £500. Stockbrokers must give accounts to persons for whom they sell etc., and enter the same in books which they must show to such persons on demand under a penalty of £100 and disqualification. A broker licensed under the Act is empowered to demand and take from every person for whom he sells such stock, a fee of 2s. 6d. per cent. and no more for brokerage or commission, and any such person taking or receiving directly or indirectly any money or other reward or thing for brokerage or commission for selling or buying any such stock is liable to a penalty of £100.

The Dublin Stock Exchange is now governed by Rules and Regulations approved by the Lord Lieutenant under the foregoing Acts, and consists of Stockbrokers duly licensed by the Lord Lieutenant and admitted, who pay the annual subscription and conform to the Rules and Regulations so approved. The following are amongst the most important Rules of the Dublin Stock Exchange: — No member can enter into any business or employment other than that of a stock or share broker without the previous sanction by resolution of the Committee (which they can withdraw) and such sanction is in no case given where the business or employment involves any financial liability to the member, and any member infringing the Rule is liable to be declared no longer a member, or to be dealt with in such other manner as the Committee see fit. No person can be a member who has a place of business elsewhere than in Dublin, or who is a member of any other Sharebrokers' Association or Stock Exchange (see *infra*). Every applicant for admission into the Exchange must satisfy the Committee that he is a *bona fide* owner of a sum of not less than £2000 immediately available for the conduct of his business and furnish the Commit-

tee with the names of two solvent respectable persons prepared to give security for him in the sum of £500 each, for the space of three years from the date of his admission, the names of the sureties to be subject to the approval of the Committee. A member who provides such security must, on the default, insolvency, bankruptcy, lunacy, or death of any of his sureties, forthwith intimate the same to the Secretary and provide other security for the residue of the required term. Every applicant for admission must give additional security, beyond the £1000 as above, for the sum of £1000 for a like time, either by a deposit of cash or by assignment or transfer out of the member's own name, of stock, shares, or other securities, subject to the approval of the Committee. A member must not enter into partnership with any of his sureties until he has first provided other sureties, securities or cash, to the satisfaction of the Committee. A member may change his securities. No person is admissible as a member if he is a bill or discount broker, or engaged in any trade or profession incompatible with the legitimate and proper business of the Stock Exchange, or if he has been in the employment of a member within one year previously to his application, unless with the consent in writing of any member or members in whose employment he has been during the previous twelve months, or unless he has served his apprenticeship by sealed indenture, or if his wife is engaged in business, or if he is a member of or subscriber to any other institution where dealings in stocks or shares are carried on. If any person, subsequently to his admission, becomes subject to any of the foregoing disqualifications, he ceases to be a member. Suspended members may be reinstated subject to such special conditions as the Committee may determine. An applicant for re-admission who has been a bankrupt or who has passed through the Insolvent Court, or who has arranged or compounded with his creditors, is not eligible so far as relates to solvency, unless he has paid 6s. 8d. in the £ on his debts, nor then until two years after he has obtained his certificate or fulfilled the conditions of his arrangement or composition, unless he has paid his debts in full. No applicant having been more than once a bankrupt, or having passed more than once through the Insolvency Court, or having more than once arranged or compounded with his creditors is eligible for re-admission unless and until he has paid in full. The President, being authorized by a meeting of the Stock Exchange, may make application to the Lord Lieutenant to refuse to license any person coming within the foregoing objections, or to withdraw the license if granted. Every applicant having been approved by the Stock Exchange who has obtained the Lord Lieutenant's license to act as a Government Stock Broker pursuant to the Acts, and who is not disqualified by any of the Rules, must upon payment of the admission fee and annual subscription be admitted a member of the Exchange and so continue as long as he pays the annual subscription and does not become disqualified by a breach of any of the Rules, Regulations or Usages of the Exchange. A member entering into partnership with any person not a member of the Exchange, is, on proof before the Committee, liable to be declared to be no longer a member, and members entering into partnership with each other or making any change in their firm, either by dissolution of partnership or taking an additional partner, or partners, must give immediate notice thereof signed by each partner to the Committee through the Secretary.

Authorized Clerks may, subject to the approval and sanction of the Committee, upon application by members and after payment of the required subscription, attend regularly on behalf of the said members, who are responsible for all acts, transactions, and omissions of their Authorized Clerks, and no member is to be held answerable for any money borrowed by his Clerk unless he gave special authority for that purpose. Members may at any time withdraw Authorized Clerks on giving written intimation thereof to the Committee, who must notify such withdrawal to the members in the Exchange. Members may, with the sanction of the Committee, substitute other Authorized Clerks for those withdrawn, and further Clerks for whom the members they represent are to be responsible may, with the sanction of the President, and during the pleasure of the Committee, attend on behalf of their employers, in the temporary absence and in lieu of Authorized Clerks. The approval of the Committee on the admission of an Authorized Clerk is to be understood to be only during the good behaviour of such Clerk and they reserve the right at any time to suspend or terminate the privilege of admission, and if such privilege is withdrawn, an approved substitute is allowed.

The management of the Stock Exchange is entrusted to a Committee of nine members, including the President and Vice-President, all elected by ballot of the

members at the Annual Meeting and continuing in office for one year, but no two members of a firm are eligible and no person can be elected to the Committee who has not been a member of the Exchange for 5 years immediately preceding the day of election, and any person ceasing to be a member of the Exchange *ipso facto* vacates his seat on the Committee. Five members form a quorum and all questions are decided by a majority. The Committee have the following powers: —

1. Appointment of Trustees.
2. Appointment of Sub-Committees.
3. Regulation of the Appointments of Secretary, Assistants, and Servants.
4. Admission and Reinstatement of Members.
5. Appointment of Business Meetings.
6. Appointments of Carrying-over days and of Special Name Days, Settling days and Buying-in days.
7. General superintendence and management of the affairs of the Stock Exchange.
8. Management of the Funds of the Stock Exchange.
9. Declaration of Defaulters.
10. Suspension or Expulsion of Members, other than defaulters. A resolution for the suspension or expulsion of a member, other than a defaulter, must be carried by a majority of not less than two thirds in a Committee specially summoned for the purpose (six to form a *quorum*), and must be confirmed at a subsequent General Meeting of the Stock Exchange specially convened for the purpose, and by the Lord Lieutenant.
11. Fining and censuring, subject to confirmation at a General Meeting of the Stock Exchange.

They have power to investigate and adjudicate upon all charges, by whomsoever made, affecting the character and dealings of any member of the Exchange. In case of a dispute between members, when they require the arbitration of the Committee thereon, each member must state his case in writing. In case of a dispute between members respecting any of their dealings, it must, if possible, be decided at the time by the members present. No member having preferred a charge against another member must allow the same to be dormant, but must proceed to establish it without delay or interruption, otherwise the claim will be considered as abandoned. No member of the Committee is competent to vote in any case of dispute in which he may be personally interested, and if present must retire. The Committee have power from time to time to cancel or alter any regulations which have reference to Applications for Quotation by or on behalf of Companies, and to remove any Company already quoted on the list. Special meetings of the Stock Exchange may be summoned either by the President, two members of the Committee, or by a written requisition signed by seven or more members, and the President must then summon a special meeting of the Stock Exchange on such requisition, to consider the subject referred to by such requisition. Not less than 7 days' notice of the object of such meeting must be given to the members, by posting it in the Stock Exchange, and all discussions are confined to the subject mentioned in the notice. The Committee do not recognize dealings in stocks or shares where a special settlement has been refused. If a non-member makes any complaint against a member, the Committee in the first place must consider whether the complaint is fitting for their adjudication; and in the event of their decision being in the affirmative, the non-member must (previously to the hearing of the case by the Committee) sign a written consent in writing to refer the matter to the Committee.

The Official Lists must as far as practicable contain discriminating reference to such Companies as have adopted the provisions of the Forged Transfer Acts 1891 and 1892, and any subsequent Act relative thereto, and also as far as practicable reference to such Companies as claim a right of veto, pre-emption, or prior lien upon their securities, or the right (whether in liquidation or otherwise) to redeem their preference securities at par, and also the date and terms of redemption of debentures. The Official Lists of Prices are published daily under the authority of the Committee and in accordance with the preceding rule, and no List can be published by a member without the sanction of the Committee, and one copy of such List verified and signed by the Secretary is filed for reference and as matter of record. All transactions in Listed Securities are to be quoted as they occur, and published daily in the Official List, but no quotation is allowed for any bargain unless made regularly and in open market. Bargains made at the medium, or contingent on next price, prevent the seller

buying, or the buyer selling, so as to cause a fresh quotation, unless on fresh instructions from a principal. An offer to buy or sell, naming a certain number of shares or amount of stock and also a price, is binding on members making such an offer only for such specified number, and an offer to buy or sell securities, merely naming a price and not specifying the quantity is binding for the quotable quantities, if accepted at once. Members must enter in their respective Market Books all bargains and check them with the members with whom the bargains are made, as soon as practicable on the same day, and when a bargain has been made which causes a quotation of price, it must be immediately announced to the Secretary, who then calls out the price and records the same, and if such price is not so announced the quotation may be inserted by order of the President, unless its insertion is objected to by ten members.

The Name Day and Account Day are the same as those fixed by the London Stock Exchange. The Secretary must declare before 3 o'clock p.m. on Contango Day the Making-up Prices of Securities for the Settlement, by taking the approximate average price of the two previous days, but London Making-up price is to be taken when applicable. In cases of dispute as to the Making-up Price, or any omission on fixing the same, the decision of the President is to be taken. The dates of Special Settlement fixed by the London Stock Exchange are to be observed as far as possible, but where no Special Settlement has been fixed by the London Stock Exchange, the Committee may, if no impediment exists, appoint a Special Settling day for the settlement of bargains, and may make such regulations on the subject as they may deem proper. All sums due for differences by one member to another on the Account Day are payable not later than 12 o'clock noon on the following day.

Every member is directly and primarily liable to every other member with whom he effects a bargain, for the due fulfilment of such bargain in accordance with the Rules, Regulations, and Usages of the Exchange, whether the same is made for account of the member effecting it, or for account of a principal, unless, on the date of the bargain, the name and address of such principal is given in writing, and accepted by the other contracting member, without prejudice to: a) the legal rights of members against their own principals; b) the legal rights of members against the principals of other members (subject however to the prohibition of legal proceedings: *infra*); c) the legal rights of principals *inter se*, all which are strictly reserved. No member in respect of a bargain made by him (on behalf of a principal, and as broker only), is to be deemed to have undertaken to be or be personally liable or responsible under the preceding Rule in any way to any party or parties: a) for the payment of calls made by a company subsequent to the delivery and acceptance of the transfer, or b) in the absence of any agreement to the contrary, for the registration of transfers of securities; or for any consequences resulting from the non-registration of such securities. A member selling (on behalf of a principal and as broker only) a security capable of being registered, is responsible for the genuineness and regularity of all documents delivered, until reasonable time has been allowed to the buyer or his broker, to obtain registration or verification of such documents, but for no longer time, unless fraud or bad faith be proved against him or his principal. No member must attempt to enforce by legal proceedings any claim arising out of a Stock Exchange transaction against a member or a defaulter or against the principal of a member or of a defaulter, without the consent either of such member or of the Stock Exchange creditors of such defaulter, or of the Committee.

A member unable to fulfil his engagements will be publicly declared a defaulter by direction of the President or any two members of the Committee. If any member of the Exchange shall fail in his credit, become a defaulter on the Stock Exchange or to the public, compound with his creditors, or become insolvent or bankrupt, he immediately thereupon ceases to be a member of the Stock Exchange, and an application is forthwith made to the Lord Lieutenant to annul his license. One or more members may be appointed by the Committee to act as Assignees or Inspectors of the estate of a defaulting member, whose duty it is to obtain from such member his original books of account and a statement of the sums owing to and by him, to attend meetings of creditors, to summon such member before such meetings; to enter into strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to manage the estate in conformity with the Rules, Regulations, and Usages of the Exchange. The assignees of the estate of a defaulter must at once proceed to wind up his affairs, and have power to appoint

an Accountant, to be paid out of the estate. When the Assignees are prepared with a balance-sheet, they must submit the same to the Committee, who declare the amount of dividend payable.

The hours of business in the Stock Exchange are from 12 o'clock noon to 1 o'clock p.m., — on Saturdays from 11.15 a.m. to 11.45 a.m., — unless altered by the members on sufficient notice, but the President has power to extend or curtail the time for business at his own discretion. The Exchange is closed on the following days: 1st January, 17th March, Good Friday, Easter Monday, 1st May, Whit Monday, First Monday in August, 1st November, Christmas Day, 26th December.

The Belfast Stock Exchange Association was established in 1895 upon practically the same lines as the English Provincial Stock Exchanges and is not incorporated. The Cork Stock Exchange was formed in 1886, but not under any statutory authority. Both Exchanges are members of the "Associated Stock Exchanges". The objects of the latter body are to discuss and consider all questions of general business interest and to interchange views upon and devise methods for the convenient execution and settlement of business, to assimilate the practice of the several Exchanges and generally to promote the interest of Exchanges and their members. The Council is composed of one representative from each Associated and properly constituted Stock Exchange with additional representatives for every fifty or part of fifty members in excess of the first fifty on its roll, and seven of the Council form a *quorum*. Each Associated Stock Exchange has the right of nominating (in writing beforehand) a Deputy in place of any representative on the Council unable to attend a meeting.

In *Stafford v. Henry* (1850) 12 Irish Equity Reports 400, it was held that a Stockbroker who occasionally received money from his customers and paid it out on their drafts and discounted bills, but who did not hold himself out as a banker was not a banker within the operation of the 33 Geo. II, c. 14 (Irish) 1759 *supra*.

VIII. Guaranties.

The Irish Statute of Frauds 1695 (7 Will. III, c. 12) s. 2, which is still in force, contains a provision identical with that contained in the English Statute as to special promises to answer for the debt, default etc. of another person, and the principles of English law generally in relation to guaranties apply in Ireland.

IX. Sale of Goods.

The Sale of Goods Act 1893 (56 & 57 Vict. c. 71) and the rules of English law relating to the subject apply to Ireland. By 14 & 15 Car. II c. 3 (Irish), 1662, innholders are liable for horses delivered to them to be kept or turned out to grass; and by 4 Ann. c. 11 s. 2 (Irish) 1705, the sale in any fair or market overt of a horse stolen is not to alter the property in such horse unless it is openly led or kept standing one hour between 10 a.m. and sun setting, in the fair or market overt wherein horses are commonly sold, and this section further sets out the requisites to the passing of the property in stolen horses.

By 25 Geo II, c. 15 (Irish) 1751, wheat, meal, malt, potatoes etc., must be sold by avoirdupois weight and not by measure, and by 1. Geo III c. 9 (Irish) 1761, gold and silver wire, plate, thread, lace etc., must be sold by troy weight.

By 10 Geo. I, c. 10 s. 6 (Irish) 1723, persons who have sold cattle or sheep may dispose of them again if the buyer leaves them on their hands more than five days after the time agreed, and the buyer must pay all damages sustained by the owners of the cattle by reason of their not taking them away according to agreement. By 2 Ann. c. 15 s. 6 (Irish) 1703, if any person in any market or fair gives earnest for any cattle or sheep and the seller does not after receiving the earnest declare that it is a bargain and that he is content to receive and keep the earnest, the contract is invalid and the cattle etc. may be sold again, and by s. 12, no seller of cattle in market or fair is obliged to wait for the buyer above two hours after such earnest is given, and if within that time the buyer does not pay down the full price and take the cattle away, the buyer forfeits the earnest and the seller may re-sell the cattle, and if the seller cannot re-sell the cattle by reason of the earnest given and the bargain made, to any other person, the seller may recover damages and full costs for the loss of his market.

X. Maritime Law.

There is no special legislation with regard to shipping etc, in Ireland, the only distinction between English and Irish law being in respect of Jurisdiction, Local Courts, Procedure, Officers, etc. The Jurisdiction and procedure is under the Court of Admiralty (Ireland) Act 1867 (30 & 31 Vict. c. 114) as amended by 39 & 40 Vict. c. 28, and 40 & 41 Vict. cc 56 & 57. Admiralty business in Ireland is now assigned to the King's Bench Division of the High Court in Ireland by 60 & 61 Vict. c. 66. The Merchant Shipping Act 1894 (57 & 58 Vict. c. 60) extends to Ireland with certain unimportant reservations.

XI. Marine Insurance.

The Marine Insurance Act 1906 (6 Edw. VII, c. 41) and the principles of English law relating to the subject apply to Ireland.

XII. Carriage by Land.

The Carriers Act 1830 (11 Geo IV, and 1 Will. IV c. 68), applies to Ireland, as do most of the Public General Acts for the regulation of Railways, and also the Railway, and Canal Traffic Acts. The Irish Tramway Act 1860 incorporates the Railway and Canal Traffic Act 1854, and in the Irish Light Railway Acts most of the general Railway Acts are incorporated. By the Irish Bankrupt and Insolvent Amendment Act, 1865 (28 & 29 Vict. c. 20), no Irish railway company incorporated by Act of Parliament, can be made bankrupt under the Irish Bankrupt and Insolvent Act, 1857, and the provisions of that Act relating to the bankruptcy of joint stock companies do not apply to railway companies so incorporated.

XIII. Trade Marks.

The Merchandise Marks Acts, The Trade Marks Acts, and the Patent, Designs and Trade Marks Acts at present in force in England apply to Ireland. By the Merchandise Marks (Ireland) Act 1909 (9 Edw. VII c. 24) "An Act to enable the Department of Agriculture and Technical Instruction for Ireland to undertake the Prosecution in certain cases under the Merchandise Marks Act 1887," the Department of Agriculture and Technical Instruction for Ireland, with the concurrence of the Lord Chancellor of Ireland and of the Board of Trade, may make regulations providing that in cases which appear to the Department to relate to Irish agricultural produce or the produce of any other Irish rural industry and to affect the general interests of the Country or a section of the community or of a trade, that the prosecution in Ireland of offences under the Merchandise Marks Act 1887 shall be undertaken by the Department, and prescribing the conditions on which such prosecutions are to be so undertaken, and all such regulations are to be laid before Parliament within three weeks, etc., and nothing in the Act is to affect the power by any persons or authority to undertake prosecutions otherwise than under such regulations.

Bankruptcy and Insolvency.

By N. W. Sibley, B. A., LL.M., Barrister-at-Law.

Bankruptcy Law of England.

Statutes: 46 & 47 Vict. c. 52 (1883); 47 & 48 Vict. c. 9 (1885); 50 & 51 Vict. c. 57 (1887); 50 & 51 Vict. c. 66 (1887); 51 & 52 Vict. c. 62 (1889); 53 & 54 Vict. c. 71 (1890).]

Part I. Preliminary Observations.

The law of bankruptcy is a modern creation, slowly evolved out of the criminal law in answer to the necessities of a widely spread industrial life. Until the Relief of Insolvent Debtors Acts, the first of which was passed in 1813, bankruptcy was a privilege confined to traders. Hence, in England, in whose hands, Vattel declared (*Droit des Gens*, livre 1, Ch. 8, p. 85) it was chiefly commerce that placed the balance of Europe, great importance was early attributed to the law of bankruptcy. From 1731 to 1825, fraudulent bankruptcy was made felony without benefit of clergy, i. e. made capitally punishable on a first offence. (Stephen's *Hist. Cr. Law*; Vol. 3; p. 229.) This legislation was defended by Blackstone, who commented on it in the following terms. — It is allowed in general by such as are most averse to the infliction of capital punishment that the offence of fraudulent bankruptcy, being an atrocious species of the *crimen falsi*, ought to be put upon a level with those of forgery and falsifying the coin": (4 *Comm.* p. 156. The date of Blackstone's Commentaries is 1769, or about forty years after the passing of the Statute 5 Geo 2 c. 30, which made fraudulent bankruptcy a capital offence for the first time.) At the treaty of Amiens, in 1803, between England, France, Spain, and Holland, fraudulent bankruptcy was made an extraditable crime, when the category of extradition crimes was much more restricted than at the present time, and in fact only comprised some three offences, all of the very gravest character, ex. gr. murder, forgery, or fraudulent bankruptcy. (Cf. reference to the Treaty of Amiens in the Aliens Act of 1802, s. 21; Statute 42 Geo. 3, 92.) In 1803, according to this provision of the Treaty of Amiens, the view was clearly taken that fraudulent bankruptcy bordered upon forgery, as Blackstone considered. The offence of fraudulent bankruptcy has been continued an extradition crime (cf. Clarke on Extradition, App. p. xix; and the list of crimes in the first schedule to the Extradition Act, 1870; Stat. 33 & 34 Vict. c. 52), although offences against the bankruptcy laws have been reduced from felony to misdemeanour (Bankruptcy Act, 1883, s. 31; Bankruptcy Act, 1890, s. 27, (1); Debtors Act, 1869; s. 11;) except in the case of a bankrupt absconding with property (felony by section 12 of the Debtors Act, 1869.) — In the last three hundred and fifty years, beginning with the Statute 34 & 35 Hen. VIII, c. 4 (1542) (This Act was repealed in 1826, by the Statute 6 Geo. 4, c. 16), there have been no less than thirty-eight Bankruptcy Acts. The earliest legislation was merely directed against the fraudulent debtor, but the Bankruptcy Act of 1883 discriminates — which no previous system has done — between insolvency brought on by misconduct and insolvency due to misfortune; and by steadily discountenancing the one and dealing leniently with the other, it has done much to maintain a high standard of commercial morality. The laws of almost all early communities on the subject of debt were exceedingly severe. The ancient common law of this country gave no direct sanction to imprisonment for debt, but was made to do so by the introduction of a fiction by applying the right of arrest on *mesne process* that previously existed to the right of arrest on a judgment in debt (1795, 3 Salk. 286). Therefore at an early date by the general law a judgment creditor could arrest his judgment debtor upon a writ of *capias ad satisfaciendum*, and keep him in prison till he paid, or if he did not pay, for an indefinite time, indeed for his life. (Life of Romilly, Vol. 3; p. 107.)

The old harsh law of debtor and creditor, as regards non-traders, before 1813, is well described by Sir Samuel Romilly, the greatest reformer of the criminal law that this country has ever had. (*Life of Romilly*; Vol. 111; pp. 107, 118, 120, 121, 123, 170, 233, 239, 252.) Romilly concluded that the excessive severity of the Bankruptcy Laws prevented their execution. Sir James Stephen adopts this view, observing that "there is, however, reason to believe that in practice the excessive severity of the (bankruptcy) law prevented its execution." In 1819 (cf. extracts from its reports in the *Annual Register* for 1819, p. 336; Mr. Basil Montague's evidence is at pp. 356—359), a Select Committee reported on capital punishment and received the evidence, amongst others, of Mr. Basil Montague. He said that since the Act of 5 Geo. 2, had passed — a period of seventy-seven years — "with nearly 40 000 bankrupts I doubt whether there have been ten prosecutions: I believe there have been only three executions; and yet fraudulent bankrupts and concealment of property are proverbial, are so common as to be supposed almost to have lost the nature of crime." (*Stephen's Hist. Cr. Law*; Vol. 3; p. 230.)

Sir Samuel Romilly, in 1813, pointed out that the evils then sought to be met by legislation as regards non-commercial insolvencies, were not only the power of the creditor to keep his debtor in prison for life, notwithstanding that the latter might have been willing to give up everything that he had in the world for the satisfaction of his debts, but also the anomalous legislative practice of having recourse as a remedy for this evil of lifelong imprisonment, to the scarcely inferior evil of occasional Insolvent Debtors Acts, passed at uncertain but never at distant periods, which abrogated the law, cancelled men's contracts, and turned loose a crowd of insolvent debtors, because they were multiplying so fast that the prisons were not capacious enough to hold them. In 1813, Romilly declared that there were about 3000 prisoners confined for debt in the different prisons in England and Wales alone. Again, while our laws were very severe as far as they gave a remedy against the person of the debtor, they were very relaxed in the remedies they supplied against his property. In 1813, Romilly observes that neither a non-trader debtor's freehold or copyhold estates, nor money he possessed in the public funds, could be made applicable to pay the demands of the creditors who sued him. Writs of error for the mere purpose of delay were permitted.

There were enormous difficulties to be overcome before any of the great evils attending the laws of bankruptcy and insolvency could be removed. The Common Council of the City of London declared themselves inimical to the Relief of Insolvent Debtors Act of 1813, and appointed a committee to oppose it. The measure was condemned as utterly impracticable by both Lord Eldon and Lord Ellenborough, the Lord Chancellor and Lord Chief Justice of that day. Amendments were insidiously introduced into the measure when it was passing through the Commons in the hope that it would be rejected by the House of Lords. After the passing of the Insolvent Debtors Act, petitions for its repeal were presented from London, Westminster, Bristol, and many other towns. Romilly states that, from the ignorance of magistrates who executed the Insolvent Debtors Relief Act, numerous frauds were committed under it.

Abolition of Imprisonment for Debt. A century of legislative effort has removed all the evils in the laws of bankruptcy and insolvency indicated by Sir Samuel Romilly in 1813. Imprisonment for debt was abolished by the Debtors Act, 1869, with six exceptions. The Debtors Act, 1869, s. 4 [Statute 32 & 33 Vict. c. 62]; provides that — "With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money. There shall be excepted from the operation of the above enactment:

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract.
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace.
3. Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of equity any sum in his possession or under his control.
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order.

5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order.
6. Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made.

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year: and, secondly, that nothing in this section shall alter the effect of any judgment or order of any Court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money". (Cf. Williams on Bankruptcy; pp. 683—88.) The effect of these exceptions, however, does somewhat modify the popular idea that imprisonment for debt is abolished. In the year 1903, 17598 persons were incarcerated in English prisons for debt on civil process; in 1905, the number was 19830. Assuming the great increase of population that has taken place since 1813, it is clear that more persons are imprisoned for debt per 1000 of the population than were imprisoned a century ago. Nor can it be said that since 1869 the incidence of the punishment of imprisonment is exclusively confined to the dishonest debtor. In an age like that at which Romilly wrote, when neither a debtor's freehold nor copyhold estates could be taken in execution and sold for the payment of his debts, and when money he possessed in the funds was not applicable for that purpose, there may easily have been many debtors imprisoned who could pay their debts.

Doctrine of Reputed Ownership — Discovery of Debtor's Property — Gambling and Suspension of Discharge — Mutual Credits and Set-Off. Other stages in the evolution of the modern law of bankruptcy, as it stands under the Bankruptcy Acts, 1883 to 1890, are the following. In 1621, on the passing of the Statute 21 Jac. 1, c. 19, there first appeared the doctrine of reputed ownership, a feature of bankruptcy law that still, sub modo, distinguishes the position of the trader and non-trader bankrupt. The Bankruptcy Act, 1883, provides that the property of the bankrupt divisible amongst his creditors shall [inter alia] include; — "All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section." Cf. Williams on Bankruptcy; p. 217 *et seq.* In 1720, on the passing of the Statute 7 Geo. 1, c. 31, debts payable at a future day were made provable in bankruptcy (the 2nd Schedule of the Bankruptcy Act, 1883, provides by rule 21; that "A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted": Williams on Bankruptcy p. 402; Baldwin on Bankruptcy p. 650). Three important principles of modern bankruptcy law first found recognition in a statute passed in 1731. These principles are that a debtor ought to make full discovery of his property (by the Bankruptcy Act, 1883, s. 27 (2), if the debtor or his wife, or any person indebted to him, refuses to appear before the Court, the Court may order him to be apprehended and brought up for examination. Where a witness refuses to answer any question the registrar may allow to be put to him, the registrar will report to the judge, who will deal with the matter as if the witness had made default in answering before the judge [B. R. 88]), that the privilege of bankruptcy is forfeited by the debtor's gambling (the Bankruptcy Act, 1890, s. 8 categorically enumerates certain facts which are a ground for the refusal or suspension of a bankrupt's discharge. Among these facts are that the bankrupt has brought on or contributed to his bankruptcy by gambling), and that there may be mutual credit and set-off between a debtor against whom a receiving order has been made and any person proving a debt under such receiving order. (Cf. the Bankruptcy Act, 1883, s. 38, which provides that — "Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an

account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.")

History of Public and Private Administration of the Bankrupt's Estate. It has been said that the chief characteristic of the Bankruptcy Acts of the last century is the alternate abandonment of and reversion to, the principle of official administration of the bankrupt's estate. The system of official assignees was first introduced by the Act 1 & 2 Will. IV, c. 56, one of them being appointed to act in each bankruptcy with specific duties incident to such charge. This system lasted till 1869, when two important Acts were passed, and the system of official administration of the bankrupt's estate was abandoned, because it had been found very expensive and also because there was a strong feeling that the general body of creditors ought to have more immediate control over the proceedings. But the Bankruptcy Act of 1869 (32 & 33 Vict. c. 71), now entirely repealed, was found equally to involve great expense and delay. The system of private administration of the bankrupt's estate by a trustee for the creditors was found unsatisfactory. It was found that the creditor's trustee was nearly totally irresponsible, so that in many cases the whole of the details as to the mode in which a debtor's estate was to be realized were practically arranged at the will and discretion of one man, who, by means of the proxies he might have obtained, was able even to vote himself trustee, fix his own remuneration and nominate the committee of inspection.

The Bankruptcy Act, 1883, consecrates the principle of Official Administration. This and other errors in the Bankruptcy Act of 1869 led to a marked reversion to the principles of officialism in the administration of the bankrupt's estates in the measure now in force — the Bankruptcy Act of 1883. (Baldwin on Bankruptcy p. 5.) Yet it has been well said that the motto of the Bankruptcy Act of 1883 is "the estate for the creditors", not for the debtor. Though the Act consecrates the principle of official administration it seeks to combine the advantages of that principle with the advantages of a creditors' administration.

Principal Changes effected by Bankruptcy Act, 1883, now in force and succeeding Statutes — No liquidation by Arrangement without Approval of the Court — Virtual abolition of distinction between Traders and Non-Traders — New Acts of Bankruptcy — Appellate Rights — Preferential Payments. The principle changes effected by the Act of 1883 are the following: Liquidation by arrangement and composition under ss. 125, 126 of the Bankruptcy Act, 1869, has been abolished, no composition being allowed, under ordinary circumstances, except under petition in bankruptcy, and with the approval of the Court. This constitutes a great improvement on the law as it stood previous to 1883, as through an unfortunate slip in the Act of 1869, there was no official scrutiny of the administration of debtors' estates in cases of liquidation by arrangement. Again the distinction between traders and non-traders has been virtually removed (till 1861 non-traders could not become bankrupt), although the doctrine of reputed ownership is still confined to trade chattels; several new acts of bankruptcy have been added: the rights of creditors under an execution or attachment have been restricted; proceedings by debtor's summons, and writs of elegit so far as goods are concerned, have both been abolished. Permission is again granted to a debtor to petition for his own adjudication (this involves a reversion to a principle of bankruptcy law that was first introduced in 1825, on the passing of the Statute 6 Geo. IV, c. 16, but was in turn derogated from by the Bankruptcy Act of 1869), and stringent regulations apply to trustees, and to the discharge of the debtor. The control of bankruptcy matters is vested in the Board of Trade, and new officials have been appointed, called "official receivers", to whom are assigned duties with regard both to the debtor's conduct and to the administration of his estate.

The additional amending legislation on the subject of bankruptcy is as follows. In 1884 it was enacted that bankruptcy appeals from County Courts should lie to a Divisional Court (Bankruptcy Appeals [County Courts] Act, 1884), and not to the Court of Appeal as enacted in 1883 (Bankruptcy Act, 1883, s. 104 (2), par. a). It

was, however, provided that a conditional right of appeal should lie to the Court of Appeal from the Divisional Court.

In 1888 there was passed a measure intitled the Preferential Payments in Bankruptcy Act (51 & 52 Viet. c. 62), which involved an alteration of the Bankruptcy Act, 1883. Priority was given by the Act of 1888 in the case of parochial or other local rates, and the wages of a clerk, servant, labourer, or workman when they were due from a company, the Act of 1883 having only given priority to such debts when they were due from private individual bankrupts. The amount of the wages of a labourer or workman in respect of which he could claim priority was reduced from fifty to twenty-five pounds by the Act of 1888, and certain other small changes were effected.

Two other Acts dealing with bankruptcy matters followed, one (50 & 51 Viet. c. 66) giving facilities for the discharge of bankrupts, under prior bankruptcy statutes; the other (51 & 52 Viet. c. 62) amending the law with regard to preferential payments in bankruptcy.

In 1890 an Act to amend the Law of Bankruptcy was passed, (53 & 54 Viet. c. 71) which altered the Bankruptcy Act, 1883, in several particulars. By section 1 of the Bankruptcy Act, 1890, alternative and additional conditions precedent are superadded before the levying of execution by seizure and sale of a person's goods constitutes an act of bankruptcy within the meaning of section 4 (1) of the Bankruptcy Act, 1883. The goods must have been either sold or held by the sheriff for twenty-one days. Compositions or schemes of arrangement in the principal Act (Bankruptcy Act, 1883, s. 18) are altered in the Act of 1890, s. 3. The conditions precedent for the granting of an order of discharge in the principal Act (Bankruptcy Act, 1883, s. 28) are altered in the Bankruptcy Act, 1890, s. 8 *et seq.* The duties of the sheriff as to goods taken in execution are altered, so as to confer on the sheriff a power to deliver money seized or received in part satisfaction of the execution to the official receiver (Bankruptcy Act, 1890, s. 11, (1)). Under section 15 (1) of the Bankruptcy Act, 1890, the remuneration of the trustee is made to depend on the amount realised by him, and is not left in the absolute discretion of the taxing officer as in the principal Act. Under s. 21 (1) of the Bankruptcy Act, 1890, the limitations as to time, concurrence, and proof, required by the principal Act on the procuring of an order of administration in bankruptcy of the estate of a person dying insolvent are entirely removed. Certain rules as to meetings of creditors in the first schedule of the principal Act are repealed by the Bankruptcy Act, 1890. (Cf. section 29, schedule, of 53 & 54 Viet. c. 71.)

The practical operation of the Deeds of Arrangement Act, 1887, on the Bankruptcy Act, 1883. The practical importance of the bankruptcy laws is limited by the frequent recourse — amounting to nearly fifty per cent. of the total number of insolvencies — which is had to private deeds of arrangement, under the administration of trustees for the creditors (Deeds of Arrangement Act, 1887 Bankruptcy Act, 1890, s. 25). It has been said that the reluctance of insolvents to avail themselves of the bankruptcy laws is to be ascribed to the publicity involved in bankruptcy matters. But publicity is not entirely avoided by an insolvent who seeks to have his estate administered privately by a trustee for his creditors. By section 5 of the Deeds of Arrangement Act, 1887, a deed of arrangement is void unless a true copy is presented to and filed with the registrar within seven clear days of its execution, together with two affidavits stating various particulars. Again by subsection (2) of section 25 of the Bankruptcy Act, 1890, unless the trustee under any deed of arrangement annually transmits to the Board of Trade an account of his receipts and payments, in a form and with a verification prescribed, he may be required by the judge of the High Court to whom bankruptcy business has been assigned, on the application of the Board of Trade, to comply with the statutory requisition above mentioned. The general desire to evade the stringent provisions of the Bankruptcy Acts is doubtless to be ascribed to other reasons besides the publicity involved in bankruptcy matters. The costs of the official administration of an insolvent's estate amount to 23 per cent; while under the non-official administration of a trustee for the creditors they only amount to 21 per cent. Solicitors are also said to find a private arrangement far more acceptable than bankruptcy to themselves as well as to their clients. The dividends are also said to be

larger when the estate of an insolvent is privately administered. Further, deeds of arrangement imply complete unanimity among the creditors, as the dissent of one creditor is enough to upset an arrangement.

Part II. Constitution, Procedure, and Powers of Court.

The Courts possessing jurisdiction in bankruptcy are the High Court and the County Courts (46 & 47 Vict. c. 52, s. 92 (1)).

The Lord Chancellor may exclude any County Court from having jurisdiction in bankruptcy, and may direct at what times and at what intervals bankruptcy business may be transacted by County Courts.

The High Court has jurisdiction in bankruptcy in the districts consolidated in the title of London.

The London Bankruptcy District comprises the city of London and places situated within the districts of the County Courts of Bloomsbury, Bow, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, and Whitechapel.

All bankruptcy matters in London may be assigned to such division of the High Court as the Lord Chancellor may direct.

A County Court for the purposes of its bankruptcy jurisdiction has under s. 100 of the Bankruptcy Act, 1883, all the powers and jurisdiction of the High Court, and the orders of the Court may be enforced accordingly (See s. 103, par. 4 as to jurisdiction in judgment summonses. The Divisional Court has no jurisdiction personally over the registrar of a County Court, to enforce compliance with an order made by it on appeal: *Ex parte Registrar of County Courts of Croydon, Re Wise*, 17 Q. B. D. 389. As to review of County Court taxation at the instance of Board of Trade, r. 124).

Every court having original jurisdiction in bankruptcy has jurisdiction throughout England. The Judge of the High Court, or of a County Court, may, under rules 18, 19, for good cause shown, order the transfer of the proceedings in any matter under the Act.

The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, are required by section 118 of the Bankruptcy Act, 1883, to be auxiliary to each other. When one court seeks the aid of another in a bankruptcy matter, the latter is empowered to exercise all the jurisdiction of the court seeking aid, if that is greater than that of the court directed to act.

A judge of the High Court may exercise jurisdiction in bankruptcy in chambers. But the following matters and applications must, by rule 6, be heard and determined in open court, namely:

- a) The public examination of debtors;
- b) Applications to approve a composition or scheme of arrangement;
- c) Applications for orders of discharge or certificates of removal of disqualifications;
- d) Appeals from the Board of Trade to the High Court;
- e) Applications to set aside or avoid any settlement, conveyance, transfer, security, or payment, or to declare for or against the title of the trustee to any property adversely claimed;
- f) Applications for the committal of any person to prison for contempt;
- g) Applications against the rejection of a proof, or to expunge or reduce a proof, where the amount of the proof exceeds £200;
- h) Applications for the trial of issues of fact with a jury, and the trial of such issues.

An English domicil the condition precedent to an adjudication in bankruptcy.

A person cannot be adjudicated a bankrupt unless he is domiciled in England or Wales. The Bankruptcy Act, 1883, does not, by section 2, except so far as is expressly provided, extend to Scotland or Ireland. Therefore even an Irishman or a Scotchman living in his own country must, for the purposes of the Bankruptcy Act, be treated as a foreigner (*ex parte O'Loughlen, re O'Loughlen* (1871) L. R. 6 Ch. 406. See 47 & 48 Vict. c. 16; 51 & 52 Vict. c. 62, s. 4; 45 & 46 Vict. c. 75, ss. 1, 3, 10, 19, 26). An alien resident and domiciled abroad, but who is a member of a firm carrying on business in England, cannot be adjudicated a bankrupt in Eng-

land on a creditor's petition if he has not committed any act of bankruptcy here, although he may have committed one abroad (*Cooke v. Vogeler Co.*, [1901] A. C. 102; *Ex parte Blain, re Sawers* (1879), 12 Ch. D. 522; *Ex parte Pearson, re Pearson* [1892] 2 Q. B. 263; As to service [for what it may be worth] of a bankruptcy notice here upon a foreigner temporarily in England, against whom a creditor's petition could not be filed under s. 6, par. 1 (d) see *Ex parte Beyer, Peacock and Co., re Clark* [1896] 2 Q. B. 476. But a conveyance or assignment of property to a trustee for the benefit of creditors is an act of bankruptcy, although made abroad, when made by a domiciled Englishman, because such a conveyance operates according to English law (*Ex parte Crispin, In re Crispin* (1873), L. R. 8 Ch. 374, 380).

There is, however, power under s. 103, par. 5, to make a receiving order, in lieu of a committal under s. 5, Debtors Act, 1869, against a foreigner temporarily resident within the jurisdiction, although there may be no power to file a creditor's petition against him (*Ex parte Clark, in re Clark* [1898] 1 Q. B. 20). A domiciled Frenchman came to England for the purposes of an action which he had commenced in the English Courts. He took five furnished rooms on the third and fourth floors of a house in London. He occupied the rooms exclusively for three months from March to June, living in them with his wife and two servants. During the three months he paid frequent visits to France, and at the end of the three months returned there. It was held that he had had a dwelling house in England "within a year before the date of the presentation of the petition within the meaning of subsection (1) of section 6 of the Bankruptcy Act 1883 (*In re Hecquard. Ex parte Hecquard* (1889) 24 Q. B. D. 71). Where a person acquires an English domicile of choice, but abandons it with the intention never to come back again to England, a bankruptcy petition cannot be served upon him (*Es parte Robertson, In re Robertson* [1885] W. N. 217), even if the abandonment of the domicile took place in consequence of pecuniary difficulties.

Jurisdiction. The effect of the provisions of s. 102 of the Bankruptcy Act 1883 as to jurisdiction is as follows:—All courts having jurisdiction in bankruptcy have coordinate jurisdiction for the purpose of deciding all questions whatever, whether of law or fact, which may arise in any case of bankruptcy. A County Court may not adjudicate upon any claim not arising out of the bankruptcy which might theretofore have been enforced by the action in the High Court, unless the parties consent, or the subject matter in dispute does not exceed two hundred pounds. A claim arising out of the bankruptcy is one which arises out of a transaction which would never have taken place but for the impending bankruptcy, and would never have been impeached if the bankruptcy had not taken place. A claim cannot arise out of the bankruptcy which arises out of a dispute that occurred before the bankruptcy (*In re Hawke. Ex parte Scott and Smith* (1885) 16 Q. B. D. 503. In this case a claim by a bankrupt's trustee for the return of wheat or the payment of its value which had been repurchased on credit from the manager of the bankrupt's stores, was held to be "a claim arising out of the bankruptcy" when the repurchase was effected a day before the bankrupt sent out notices of suspension, but was made after the repurchasers had been given the information that the bankrupt was in difficulties.) In *Williams on Bankruptcy* it is observed that the effect of the subsection (Bankruptcy Act, 1883, s. 102, 1) would seem to be that County Courts have power to try all claims which do arise out of the bankruptcy, but the judge has in each case a judicial discretion whether or not he will exercise the jurisdiction (*Re Arnold, ex parte Off. Receiver* (1891), 9 Mor. 1) although he ought not to exercise it in cases where questions of character or large amounts are involved (*Re Beswick, ex parte Hazlehurst* (1888), 5 Mor. 105, following *ex parte Armitage, re Learoyd, Witon, and Co.*, (1881) 17 Ch. D. 13; *Ex p. Price, re Roberts*, (1882) 21 Ch. D. 553, decided under the Act of 1869; *Williams on Bankruptcy* p. 322). In a recent case under this provision, i. e. section 102 (1) of the Bankruptcy Act, 1883, it was held that a County Court Judge has not jurisdiction (except by consent) to refer a claim exceeding £200 not arising out of the bankruptcy to his Registrar, to ascertain, by taking an account, the amount really due (*in re Healey; ex parte Healey* (1906) 93 L. T. 704).

Section 102 (2) of the Bankruptcy Act 1883 provides that "A Court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor

shall any appeal lie from its decisions, except in manner directed by this Act." This enactment must be read in conjunction with an earlier section of the principal Act which provides that (1) on the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or the person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose. Again (2) but this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed. (Cf. Bankruptcy Act 1883; s. 9.)

It is doubtful whether the High Court or the County Court sitting in bankruptcy may restrain an action against a debtor in the High Court, because the London Court of Bankruptcy is now united with the Supreme Court (Cf. Bankruptcy Act, 1883, s. 93), and no cause or proceeding pending in the High Court, or Court of Appeal, can be restrained by injunction or prohibition. (Supreme Court of Judicature Act, 1873, s. 24.) There is a case which may be taken to decide that a County Court sitting in bankruptcy cannot restrain an action against the debtor in the High Court (*Ex parte Reynolds, re Barnett* (1885) 15 Q. B. D. 169). It is quite clear that after the Chancery Division has allowed a matter to go on with a knowledge of the bankruptcy proceedings, it is out of the question that the matter pending in Chancery should be stayed by the County Court (*Re Richardson; Ex parte the Executors of J. Greine* (1902) 86 L. T. 690.) The injunction to stay proceedings is discretionary, and a suit in Chancery cannot be stopped when there are questions raised in it which do not relate to the bankruptcy proceedings at all, as where the bankrupt claims against a bank (which is a secured creditor) for neglect in not keeping up policies (*Ex parte Rumboll. In re Taylor* (1871) L. R. 6 Ch. 842.) Where a liquidating debtor is a joint defendant, an injunction cannot be obtained to restrain further proceedings against the liquidating debtor, but the Court will restrain the plaintiff from enforcing his judgment as against the debtor (*Ex p. Mills, re Manning* (1871) L. R. 6 Ch. 594; *Re Deere* (1875) L. R. 10 Ch. 658). The expression "stay" met with in section 10 of the Bankruptcy Act, 1883, relates to what may be done by the court before which the action is pending.

The term "bankruptcy" for the purposes of jurisdiction and the general power of Bankruptcy Courts, probably includes a composition or scheme under the Bankruptcy Act, 1890, s. 3, or under section 23 of the principal Act (Williams on Bankruptcy; p. 326).

Actions pending in other divisions brought or continued by or against the bankrupt, may be transferred to the High Court sitting in bankruptcy by the judge who has made a receiving order against the bankrupt. An order will not be made under this section (Bankruptcy Act, 1883, s. 102 ss. 4) on the application of the trustee, unless the trustee has by operation of the bankruptcy law, a higher and better title than the bankrupt himself would have had (*Ex parte Kemp, re Champagné* (1894) 69 L. T. 763). A trustee, by the operation of the law of bankruptcy, has a higher and better title than the bankrupt, where for instance the trustee claims against the mortgagees of a bankrupt, on the ground that the mortgage deed was a contrivance to defeat the creditors, and also that it was a conveyance of substantially the whole of the bankrupt's available assets to secure a pre-existing debt. (*Ex parte Brown, In re Yates* (1879) 11 Ch. D. 148.) Where the trustee has a higher and better title than the bankrupt, the point is really not arguable, the matter becomes conclusively one which is intended to be dealt with by the Court of Bankruptcy.

Procedure. Procedure in Bankruptcy is regulated by Rules of Court, which are not the Rules of the Supreme Court. Applications to Bankruptcy Courts must be made by motion, supported by affidavit. Notice to the defendant is not necessary. If the respondent intends to use affidavits in opposition to the motion, he must deliver copies of such affidavits to the applicant not less than two days before the day appointed for the hearing. If a party desires that the evidence on a pending motion in a bankruptcy matter should be taken *viva voce* he must give notice in writing to the other side; and if no objection is taken within a week, then it will be heard *viva voce* without any order. But if any objection is

raised within the week, then an application must be made to the Court (6 Manson 287). A bankrupt, if called as a witness, may be asked what account he gave of a transaction under consideration, at his public examination.

An eight days' motion is required in bankruptcy matters, to be sent by registered letter. Service of notice of the motion is equivalent to the commencement of an action. The Statute of Limitations (21 Jac. 1 c. 16 s. 3) is a bar to a motion in the Bankruptcy Court, and therefore a claim which accrued more than six years before the commencement of the motion is barred in bankruptcy.

By section 143 of the Bankruptcy Act, 1883, irregularity or formal defect does not invalidate a proceeding in bankruptcy, except where the Court considers it has worked irremediable substantial injustice. There is a power to amend.

Part III. Appeals.

On the subject of appeals the Bankruptcy Act, 1883, s. 104, as amended by the Bankruptcy Appeals (County Courts) Act, 1884 (47 Vict. c. 9), provides as follows:

- "1. Every Court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it under its bankruptcy jurisdiction.
2. Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal, as follows:
 - a) An appeal shall lie in bankruptcy matters, at the instance of any person aggrieved, from the order of a County Court to a Divisional Court of the High Court, of which the judge to whom bankruptcy business shall for the time being be assigned shall for the purpose of hearing any such appeal be a member. The decision of such Divisional Court upon any such appeal shall be final and conclusive, unless in any case it shall seem fit to the said Divisional Court or to the Court of Appeal to give special leave to appeal therefrom to her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive;
 - b) An appeal shall lie from the order of the High Court to her Majesty's Court of Appeal;
 - c) An appeal shall, with the leave of her Majesty's Court of Appeal, but not otherwise, lie from the order of that Court to the House of Lords;
 - d) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal."

An application to review a former order ought not to be an *ex parte* application; it ought to be made and decided upon by the Court before the facts of the case are gone into, otherwise the appellant will have to pay his own costs (*In re Tobias, Ex parte Tobias* [1891] 1 Q. B. 463). According to the case which shews the right procedure to adopt on an application to review under section 104 (1), the party asking for the review will have to give very good reasons why the review should be granted; but it is not necessary that he should do more than make out a *prima facie* case (*In re Lloyd, Ex parte Lloyd* (1889) 6 Morr. 297, 302).

In a case which shews the principles on which the Court will act in exercising the power to rehear (*Williams on Bankruptcy*; p. 334), where there was an application by a bankrupt for review against an order of a County Court judge absolutely refusing a discharge, (*In re Tobias, ex parte Tobias supra*), it was considered that refusal of discharge operates as a punishment, and that, where it can be shewn that the object of the punishment has been effected by the bankrupt behaving creditably by working hard, by holding responsible position, by living on a narrow income, and by not incurring any debts, the punishment of refusal of discharge may be remitted at any time. Society is injured and not benefitted by the continuance of a punishment after the necessity for it has ceased.

There can be no rehearing of an order under section 104 (1) of the Bankruptcy Act if it is not made in bankruptcy jurisdiction and by reason of the bankruptcy. A charging order made by a judge of the High Court sitting in bankruptcy, but under a statute which is not all a Bankruptcy Statute, is not an order made in bankruptcy jurisdiction (*In re Suffield and Watts; Ex parte Brown* (1888) 20 Q. B. D. 693). An appeal will lie from an order made on the re-hearing of a matter in the County Court, although the order originally made by the Court has not been varied on such rehearing (*In re Ashworth, Ex parte Ashworth* (1893) 10 Morr. 175).

There is no doubt that a Court having jurisdiction in bankruptcy may rescind a receiving order, at all events when the creditors have been either paid in full or are fully secured (*Ex parte Wemyss, In re Wemyss* (1884) 13 Q. B. D. 244). The Court will refuse to rescind a receiving order where the debtor has, subsequently to the receiving order, effected an arrangement with his creditors which it is not quite clear is for their benefit, and has been guilty of misconduct in connection with his insolvency (*In re Izod; Ex parte The Official Receiver* [1898] 1 Q. B. 241).

Any person aggrieved may appeal. By section 104 (2) of the Bankruptcy Act, 1883, an appeal in bankruptcy matters lies at the instance of "any person aggrieved". As to who are, and who are not "persons aggrieved", see cases collected in Williams on Bankruptcy; p. 332. The appeal from an order of the County Court lies to the Divisional Court. There is a further conditional right of appeal to the Court of Appeal. But the Divisional Court will only give leave to appeal to the Court of Appeal in a case of general importance, or where there is a large sum involved, or the principle involved is not quite clear (*In re Campbell* (1884) 14 Q. B. D. 32). An appeal to the Court of Appeal must be brought within twenty-one days (B. R. 130). Solicitors have a right of audience on an appeal to the Divisional Court (*In re Barnett* (1884) 15 Q. B. D. 169) but this does not extend to the Court of Appeal (*In re Elderton* (1887) 4 Morr. 36). An appeal from the judge in bankruptcy, or from one of the registrars of the High Court in bankruptcy, is to the Court of Appeal, and must be brought within 21 days (*In re Courtenay* (1884) 1 Morr. 89) calculated from the date at which the order is signed, entered, or otherwise perfected. There is a further right of appeal to the House of Lords with the leave of the Court of Appeal (Bankruptcy Act, s. 104 (b) (c)). The Court of Appeal will not give leave to appeal against its own judgment in a bankruptcy matter to the House of Lords where a case is full of suspicion, and there is no difficult question of law involved (*Ex parte Edwards; In re Tollemache* (1884) 14 Q. B. D. 415). In one case the Court of Appeal gave leave to appeal to the House of Lords in a bankruptcy matter, if the creditors, at a meeting summoned by the trustees for the purpose, should approve of an appeal being brought (*Ex parte Board of Trade; In re Parker* (1885) 15 Q. B. D. 213). As to when the Court will give leave to appeal to the House of Lords, cf. the cases collected in Williams on Bankruptcy, p. 336. An application in bankruptcy for leave to appeal in formâ pauperis to the Court of Appeal by a party who has not sued or defended in formâ pauperis in the Court below, must be made ex parte to the Court of Appeal. Upon such an application the provisions of Order XVI, rr. 22, 23, 24, as to proceedings by or against paupers, must be followed by analogy, as though they were in terms made applicable to appeals (C. A. *Ex parte Goldberg* [1893] 1 Q. B. 417). Notice of appeal from an order made by a bankruptcy Court on an application by a bankrupt for his discharge should be a fourteen days' notice. Where such notice was not given and objection was taken at the hearing, the Court directed the case to stand over for a week until the required time had elapsed (*In re Landau* (1887) 4 Morr. 253). When a bankruptcy appeal has been set down in the ordinary course and is in the day's paper for hearing, if the appellant does not appear the respondent is entitled to have the appeal dismissed with costs without giving any proof that he has been served with a notice of appeal (*Ex parte Lows* (1877) Ch. D. 160). The official receiver must in all cases be served with notice of appeal from a receiving order (*In re Webber, Ex parte Webber* (1889) 6 Morr. 313) because he is a person "directly affected" within Rule 2 of Order 58 R. S. C. and there is a danger of collusive appeals. But as a general rule the official receiver, though served with a notice of appeal, ought not to appear on the hearing, unless there are special circumstances which he desires to bring before the Court, and in the absence of special circumstances he will not be allowed his costs of appearance (*Ex parte Dixon, In re Dixon* (1884) 13 Q. B. D. 118). It is the duty of an appellant to bring before the Court of Appeal the whole of the evidence, oral as well as written, on which the order appealed from was founded, and if he does not do this, his appeal ought to be dismissed. The Court of Appeal, however, has power, by way of indulgence, in a case where a note of oral evidence has been accidentally lost, to allow that evidence to be taken over again. An appellant will not be allowed to raise in the Court of Appeal a point which he did not raise in the Court below, even though there is some evidence in support of it, if the nature of that evidence is such that, by any possibility, the respondent might have been

able to rebut it if the point had been raised originally (*Ex parte Firth, In re Cowburn* (1881) 19 Ch. D. 419). Rule 111 (2) of the Bankruptcy Rules, 1883, which provides that no appeal to the Court of Appeal shall be brought from any order relating to property when it is apparent from the proceeding that the money or money's worth involved does not exceed £50, unless by leave of the Court, was authorized by s. 127 of the Bankruptcy Act, 1883, taken in connection with s. 104, ss. (2) (d) (*Ex parte Foreman, In re Hann* (1887) 18 Q. B. D. 393). As to Rules for Appeal to the Court of Appeal, and the application of the Rules of the Supreme Court cf. Williams on Bankruptcy, p. 336.

Part IV. Who may be bankrupts. — Disqualifications of bankrupts.

A safe general answer to the question who may be bankrupts is that any person, who is not an infant, married woman, lunatic, or body corporate, may be petitioned against and adjudicated a bankrupt when he is domiciled in England, or when within a year before the date of the presentation of the petition, he has ordinarily resided or had a dwelling-house or place of business in England (Bankruptcy Act, 1883, s. 6, (1) par. d). As regards aliens, in a case decided under the Bankruptcy Act, 1883, it was held that a foreigner who is not in England and who has not previously committed an act of bankruptcy in England cannot be served with a bankruptcy notice abroad for the purpose of making him bankrupt here if he does not comply with the requirements of it. The specific facts were that the debtor was an American citizen residing at Buenos Ayres, where he carried on a business as contractor; he had never been in England at all, except on one occasion, some years before he was served with the bankruptcy notice, when travelling. The appellant's partner was also an American, but he had resided in England for three years prior to the service of the bankruptcy petition, but it was denied that he had transacted any business in England on behalf of the firm (*In re Pearson, Ex parte Pearson* [1892] 2 Q. B. 263). In a case which turned on the general principles of law on the subject, Lord Justice James said: "It appears to me that the whole question is governed by the broad general universal principle that English legislation, unless the contrary is expressly enacted, or so plainly implied as to make it the duty of an English court to give effect to an English statute, is applicable only to English subjects or to foreigners who by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction" (*Ex parte Blain, In re Sawers* (1879) 12 Ch. D. 522, 526).

Infants. Under the general law of infancy previous to 1874, there seems no doubt there were many instances in practice where infants were adjudicated bankrupts (Williams on Bankruptcy; p. 4), but since 1874, an infant cannot make himself liable by accepting a bill of exchange even for the price of necessaries (*Re Soltykoff, ex p. Margrett* [1891] 1 Q. B. 413); nor is he liable to bankruptcy proceedings in respect of a debt contracted by a firm in which he is a partner (*Lovell v. Beauchamp* [1894] A. C. 607). In a case of great nicety, it was held in the Court of Appeal that an infant who has traded cannot be adjudicated a bankrupt on the petition of a person who has supplied him with goods on credit for trade purposes, but to whom he has made no express representation that he is of full age, even though he has previously filed a liquidation petition the proceedings under which have become abortive (*Ex parte Jones* (1881) 18 Ch. D. 109). It is a condition precedent to a person's being adjudicated a bankrupt that he should be a debtor, and therefore the Bankruptcy Court must have a debtor before it; it cannot adjudicate a man a bankrupt who has no debts, and the Infants Relief Act, 1874, which applies to trading contracts, restrains an infant from incurring any debts other than debts for necessaries. It is a settled rule of the Court of Bankruptcy, which it has always acted on, that it will inquire into the consideration for a judgment debt. Therefore in a case where an infant gave a bill of exchange, payable after his majority, to a jeweller in payment for jewelry, and the creditor obtained judgment by default after the debtor's majority, and filed a petition on the debtor failing to comply with the debtor's summons, the Court of Bankruptcy looked into the consideration for the judgment, and held that all the consideration had been taken away by section 2 of the Infants' Relief Act, 1874 (*Ex parte Kibble, In re Onslow* (1875) L. R. 10 Ch. 373).

Married Women. In order to found proceedings in bankruptcy against a married woman living with her husband, there must be (1) a trading separately from her husband; and (2) there must be separate property to be administered in bankruptcy (*In re Helsby, Ex parte Helsby* (1893) 1 Mans 12, 13). It must also be shewn that, in respect of her separate business, she is free from the control of her husband, and under no obligation to account to him for the profits. Whether a married woman is carrying on a trade separately from her husband within the meaning of s. 1, ss. 5 of the Married Woman's Property Act, 1882, so as to be subject to the bankruptcy laws, depends on a third condition precedent; that is that she actually conducts the business, though her husband may take some part in the management. But a married woman cannot release herself from the jurisdiction of the bankruptcy laws, by merely shutting up her shop, when the conduct of her trading has resulted in large losses; she remains subject to the bankruptcy laws, so that a receiving order may be made against her at the instance of a trade creditor, so long as the debts she has incurred in the business remain unpaid (*In re Worsley* [1901] 1 K. B. 309).

A married woman who is not carrying on a trade separately from her husband is not subject to the bankruptcy laws, and cannot commit an act of bankruptcy under section 4 of the Bankruptcy Act, 1883, because she is under no personal liability to pay the judgment debt (*In re Gardiner, Ex parte Coulson* (1887) 20 Q. B. D. 249). A receiving order cannot be made against a married woman trading separately from her husband under a firm name on the ground of non-compliance with a bankruptcy notice founded upon a judgment obtained against her in the firm name (*In re Handford* [1899] 1 Q. B. 566). Where a judgment has been obtained against a married woman, in accordance with the form laid down in *Scott v. Morley* (20 Q. B. D. 120), the judgment debtor cannot be adjudged a bankrupt on a debtor's summons, issued on the foot of the judgment, according to a case decided in Ireland (*In re Elliott* [1900] 2 Ir. 439). The Court of Bankruptcy has power, on the hearing of a bankruptcy petition founded on a judgment debt, to go behind the judgment and inquire into the consideration for the debt. Therefore since a judgment in tort creates a personal debt in the case of a divorced woman, she can be adjudicated a bankrupt. (*In re Beauchamp* [1904] 1 K. B. 572.) But if a woman is married at the date of the judgment obtained against her, it is only a judgment against her separate estate, and not a personal judgment, and therefore, even after the death of her husband, she cannot be served with a bankruptcy notice in respect of the judgment (*In re Hewett, Ex parte Levene* [1895] 1 Q. B. 328).

Lunatics. How far a lunatic may be made a bankrupt is rather in the nature of an open question, which long has been in doubt, and it will remain in doubt until it is expressly raised in a case which requires decision, but this has never happened, though the question is an important one (*In re Farnham* [1895] 2 Ch. 799). The doubt is more than a century old (6 Ves. 34), though a hundred years ago Lord Eldon observed that "a Commission of Bankruptcy is a species of action, against which lunacy cannot be a defence" (*Anonymous* 13 Ves. 590). But by the principal Act now in force, a lunatic may be adjudicated a bankrupt acting by his committee and with the consent of the Court in Lunacy (s. 148 of the Bankruptcy Act, 1883.) Where it appears to be for the benefit of a lunatic that he should be made bankrupt, the Court will give leave to the committee in the name of the lunatic to file a declaration of insolvency, or to present a bankruptcy petition under the Bankruptcy Act, 1883, s. 4 (f) (*In re James* (1884), 12 Q. B. D. 332). Where there are very small funds that can be applied for the maintenance of a lunatic, and when without these funds he will probably become a pauper, they will be applied to his maintenance (*In re Farnham* [1895] 2 Ch. 799), by a court sitting in bankruptcy. Upon a person being found lunatic, the jurisdiction of the Court in Lunacy immediately attaches to his property, including the discretionary powers vested in the Court by ss. 117 and 120 of the Lunacy Act, 1890, of applying his property for his benefit, and cannot be ousted by a subsequent adjudication in bankruptcy made without the consent of the Court, even assuming such adjudication to be valid (as to which *quære*); and therefore the trustee taking the lunatic's property under such an adjudication can only do so subject to the jurisdiction in lunacy. A lunatic cannot commit an act of bankruptcy, at all events unless during a lucid interval, because intention is the gist of an act of bankruptcy. A liquidation

petition cannot be signed by a next friend on behalf of a lunatic not so found by inquisition (*Ex parte Cahen* (1879) 10 Ch. D. 183), but the Court in such case may appoint a person to act for him (B. R. 271 A.).

Aliens. Some notice has been already taken of the question whether a foreigner can be adjudicated a bankrupt. It has been therefore seen that by the Bankruptcy Act, 1883, s. 6, (1), par. (d) no creditor's bankruptcy petition may be filed against a debtor who is not domiciled in England, or who has not, within a year before the date of the presentation of the petition, ordinarily resided or had a dwelling-house or place of business in England. For a fuller discussion of the question whether an alien temporarily resident in England can be adjudicated a bankrupt, the reader is referred to the recognized and authoritative treatises on the law of Bankruptcy (Williams on Bankruptcy, ed. 1904; p. 3; Baldwin on Bankruptcy; ed. 1904; pp. 61—5). In a recent case a debtor acquired an English domicile after he had possessed a domicile in New Zealand, and was made a bankrupt in New Zealand when domiciled in England, and was subsequently adjudicated bankrupt in England, where the trustee in bankruptcy discovered that the debtor possessed a reversionary interest which by an oversight was not disclosed in the New Zealand bankruptcy, and it was held that the official assignee in New Zealand was entitled, as against the trustee in bankruptcy in England, to that reversionary interest (*In re Anderson*, [1911] 1 K. B. 896).

Partners. By section 115 of the Bankruptcy Act, 1883, partners may either proceed or be proceeded against in bankruptcy in the name of the firm; and by the Bankruptcy Rules, 262, it is provided that a receiving order against a firm shall operate as if it were a receiving order made against each of the persons who at the date of the order is a partner in that firm. The adjudication in bankruptcy is made against the partners individually, and not against the firm in the firm name.

Lord Alverstone, M. R., has observed that the true meaning of the 115th section of the Bankruptcy Act is that, if persons have been partners in a business, then bankruptcy proceedings can be taken against them in the partnership name. (This provision runs; — “Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings, or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of such persons to be disclosed in such manner, and verified on oath or otherwise as the Court may direct”) (*In re Wenham*, [1900] 2 Q. B. 698, 705). Therefore bankruptcy proceedings may be instituted against a firm after its dissolution when the judgment on which the bankruptcy proceedings lie was for a debt incurred during the partnership. It is a general principle of law that people cannot alter in substance their relations to their creditors on the ground they have dissolved partnership. There is a power of amending procedure in Bankruptcy under s. 143 of the principal Act, when a technical difficulty arises and no substantial injustice is worked by overriding the formal defect or irregularity. As an infant cannot contract trade debts, so if one partner in a firm is an infant, and if an act of bankruptcy is committed, a receiving order cannot be made against the firm simply, but may be made against the firm “other than” the infant partner; and if a receiving order has been made against the firm simply the proceedings may be amended under the Bankruptcy Act, 1883, s. 105 (*Lovell v. Beauchamp* [1894] A. C. 607). On this subject attention may finally be called to the observations of Lord Esher, M. R., in *ex parte Beauchamp* [1894] 1 Q. B. 1, 4). After putting the question what is the legal effect of a judgment obtained under the provisions of the Rules and Orders under the Judicature Act against a partnership in the firm name, Lord Esher proceeded—“It is a judgment available against all the partners in the firm who are liable to have a judgment made against them. . . . You cannot adjudicate the abstract thing called a “firm” bankrupt. You cannot make a firm bankrupt, unless you can make the members of the firm bankrupt.” In that case it was held that a receiving order could not be made against a partnership firm of which one of the partners was an infant.

Deceased persons. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter are, by s. 108, unless the Court otherwise orders, to be continued as if he were alive. Section 125 of the principal Act

provides for the administration in bankruptcy of the estate of a deceased insolvent. The Court has a like discretion to make or refuse the order as in the case of a petition in the case of a living debtor (*Re Outram, ex p. Ashworth* (1894), 10 Morr. 288).

Convicts. A convict is liable to pay his debts, and the 27th section of the Felony Act, 1870, expressly authorizes an execution against him for costs, though he is restrained by section 8 of that statute from making away with his property, and from allowing any of his property from being improperly diverted either from his creditors or from his family. A convict therefore can be made a bankrupt. It has been indicated by very eminent judges that a contrary rule would be unjust to creditors and cruel to the convict himself. If a convict could not be adjudicated a bankrupt the creditors would suffer by the one of their number who first issued execution getting paid to the detriment of the rest, so that the equal distribution for the benefit of all the creditors which is the theory of bankruptcy would not take place at all. Again a felon is precluded by section 8 of the Felony Act, 1870, from alienating his property, and paying a debt is in one sense an alienation of property. Yet this is a cruel construction of the Felony Act, 1870, as regards a convict, because it implies that, in a case where he was able and willing to pay his debts, he would remain liable to incur all the costs of an execution, because the creditor could sue him and get judgment against him. (Cf. the observations of Jessel, M. R., in *Ex parte Graves, In re Harris* (1881) 19 Ch. D. 1, at p. 5; and of Lindley L. J. *ibid.* at p. 6.) It has, therefore, been held that a convict can pay a debt which is claimed by a debtor's summons issued and served on him after his conviction and if he fails to pay the debt within the time limited by the summons, he will commit an act of bankruptcy, upon which an adjudication can be made against him. (*ibid.*)

Peers. When a peer is adjudged a bankrupt in England, he is by section 32, (1) par. (a) of the Bankruptcy Act, 1883, disqualified "for sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords." The act of bankruptcy and the adjudication must take place in England (Bankruptcy Act, 1883; s. 2) but the disqualifications imposed by section 32 of the Bankruptcy Act, by subsection (3) of that provision, "shall extend to all parts of the United Kingdom". The disqualifications remove and cease either when the adjudication of bankruptcy against the peer is annulled, or when he obtains a discharge with a certificate that his bankruptcy was caused by misfortune and not by misconduct. A debtor is not entitled to this certificate, but his bankruptcy will not be considered as caused by misfortune and not misconduct, when he has instituted divorce proceedings, and his petition is dismissed with costs, and he has been adjudged a bankrupt on the petition of one of the co-respondents (*In re Lord Colin Campbell* (1888) 20 Q. B. D. 816).

Disqualifications attaching on Bankruptcy. By the same section, in like events, bankruptcy disqualifies a debtor from being elected to, or sitting and voting in the House of Commons, and from being appointed or from acting as a justice of the peace, and from being elected to or holding the office of mayor, alderman, councillor, guardian of the poor, overseer of the poor, member of a sanitary authority, member of a school board, highway board, burial board, or select vestry. By section 9 of the Bankruptcy Act, 1890, the disqualifications of bankruptcy imposed by section 32 of the principal Act cease and determine at the expiration of five years from the date of the bankrupt's discharge.

There can be no disqualification unless there is an adjudication in bankruptcy under the Bankruptcy Act, 1883, though a debtor may be so far involved in pecuniary difficulties as to have made a composition with his creditors which has been accepted by resolution and by circular letter, and has also executed a bill of sale on his stock in trade, which has been duly registered, and by which he has assigned his stock in trade to a person not a creditor, to secure a sum of money advanced by him to meet the amount of the composition. A person, under the above circumstances, is not disqualified (*Aslatt v. Corporation of Southampton* (1880) 16 Ch. D. 143).

Exemption of Ambassadors and their Suites from the jurisdiction of Courts in Bankruptcy. Ambassadors, and persons who belong to their suite, are entitled to exemption from civil process, and cannot be adjudicated upon in bankruptcy (Sir Robert Phillimore's Int. Law; Vol. 2; Ch. 8; ss. 176—210; Hall's Int. Law; 5th

ed; Pt. II, Ch. IV; p. 172; Halleck's Int. Law; Vol. 1, Ch. 10; p. 332 *et seq.*) The privilege is the same as regards all the servants of the Ambassador (*Parkinson v. Potter* (1885) 16 Q. B. D. 152). Even a British subject is entitled to privilege against all civil process and is exempt from the local jurisdiction of his own country if he is also accredited to Great Britain by a foreign government as member of its embassy, unless he has been received by the British Government upon the express condition that he shall be subject thereto. But the question in each case is whether the person claiming the privilege is *bonâ fide* part of the Ambassador's family or suite. In *Lockwood v. Goysgarne* (3 Burr. 1676) the claim of privilege was disallowed to the defendant as the Ambassador's physician, as not being a case of *bonâ fide* service; and the Court said it would be of very bad consequence if protections should be set up for sale, or made use of merely for the sake of screening people from their just debts. In a very recent case, Lord Esher M. R. even doubted whether a British subject could claim the privilege of protection against his creditors as being one of a suite of an Embassy when he has previously entered into a speculative business and has contracted large liabilities. But the bankrupt in that case got his name put down as one of the attachés, in the opinion of Lord Esher, "surreptitiously and without letting the Embassy know the true facts" (*In re Cloete* (1891) 8 Morr. 200). The Court therefore in this case held that in order to entitle a person to claim the privilege of exemption from civil process as attaché to the suite of an Ambassador, such person must be a *bonâ fide* member of the Embassy, and the appointment must not be obtained for the purpose of avoiding the payment of his just debts.

Part V. Acts of Bankruptcy. — Bankruptcy Notice.

A debtor commits an act of bankruptcy under section 4 (1) of the Bankruptcy Act, 1883; when he:

1. Makes a conveyance or assignment of his property to a trustee for the benefit of his creditors.
2. Makes a fraudulent gift etc. of his property.
3. Makes a fraudulent preference.
4. Absents himself.
5. Has had an execution levied against him and his goods have been held by the sheriff for twenty-one days.
6. Files a declaration of inability to pay his debts.
7. Neglects to comply with the terms of a bankruptcy notice.
8. Gives notice of suspension of payment to his creditors.

Assignment for benefit of creditors generally. A debtor commits an act of bankruptcy "if in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally" (Bankruptcy Act, 1883, s. 4 (1) (a)). The Act does not say all the debtor's property, but this is probably what is meant (Williams on Bankruptcy, p. 7.) It was settled by *Robertson v. Liddell* (1808) 9 East, p. 487, that an assignment of all a trader's effects was an act of bankruptcy (Cf. the observations of Parke, B. in *Stewart v. Moody* (1835) 1 C. M. & R. 777, 779). The words "conveyance or assignment" are to be construed as extending to and as including the various methods of dealing with property to which conveyancers usually have recourse, although such methods are not conveyances or assignments in the proper sense of those terms—ex. gr. a declaration of trust affecting leaseholds (*In re Hughes* [1893] 1 Q. B. 595). The word "generally" in par (a) means all the creditors if it means anything, and, therefore, an assignment by a debtor for the benefit of his trade creditors only is not an act of bankruptcy under par (a). (*In re Phillips, Ex parte Barton* [1900] 2 Q. B. 329.) It is probably a consequence of the evolution of modern bankruptcy law from the criminal law that a deed of assignment is admissible in evidence in bankruptcy, though neither stamped nor registered, when it is given in evidence, not for the purpose of giving it effect and showing it to be a good deed, but for the purpose of showing that it is a bad deed. Where the act of bankruptcy on which a petition is founded is the execution by the debtor of a deed of assignment for the benefit of his creditors registered under the Deeds of Arrangement Act, 1887, the production by the petitioner of an office copy of the deed is sufficient *primâ facie* proof of the commission of the act of bankruptcy; but this does not prevent the Court

in the exercise of its discretion from requiring further evidence (*In re Slater* (1897) 4 Mans. 118). The introduction of the word "elsewhere" in the various paragraphs of section 4 (1), and the act of bankruptcy of remaining abroad as defined by par. (d), has placed it beyond a doubt that in some cases an act of bankruptcy can be committed abroad by persons subject to the English law (Williams on Bankruptcy; p. 8.) As regards an Englishman, a subject of the British Crown, it is not necessary that he should be here, if he has done that which the Act of Parliament says shall give jurisdiction, because he is bound by the Act by reason of his being a British subject, though, of course, in the case of a British subject not resident here, it may by a question on the construction of the Act whether that which, if he had been resident here, would have brought him within the Act, has that effect when he is not resident here. But the clause does not justify an interpretation which would render a foreigner who has never been here, and has never submitted himself to the English Act of Parliament, capable of committing an act of bankruptcy (*Ex parte Blain* (1879) 12 Ch. D. 522). A conveyance or assignment executed by a domiciled Englishman, falls under par. (a), although he is out of England, as that is the case of an assignment which is to operate according to English law; but a conveyance executed by a foreigner domiciled in his own country must necessarily operate according to the foreign law, and it cannot be supposed that it was ever intended that such a conveyance should be an act of bankruptcy (*Cooke v. Vogeler Company* [1900] A. C. 102). A deed of assignment executed by a debtor for the benefit of all his creditors, but which was not intended to operate in the event of bankruptcy, holds good as a release in case the consideration for which it was given should hold good, and not otherwise (*In re Stephenson*, (1888) 20 Q. B. D. 540). But in a recent case it was held that the execution of a deed of assignment for the benefit of creditors is an act of bankruptcy, and, if bankruptcy proceedings supervene within three months, the assignment becomes void as against the trustee in bankruptcy. Any one who under that assignment arrogates to himself and exercises the right to receive part of the estate as assignee for the benefit of creditors, does so at his peril, and those who act in acknowledgment of that right also do so at their peril. If bankruptcy proceedings supervene within three months, the assignee, to use the language of Mr. Justice Vaughan Williams, in *re Mardon* (1896) 1 Q. B. 144, becomes a trustee de son tort and is accountable for all assets of the bankrupt which have come to his hands. The trustee in bankruptcy has a right, therefore, to require him to give up those assets; and payments made to the assignee by a debtor to the bankrupt's estate are not valid payments, but are made to the wrong person, and therefore the trustee in bankruptcy may sue the debtors who have made such payments and recover all they owe to the bankrupt's estate. If a person so sued can prove that the debt which he paid to the assignee has in whole or in part been received by the trustee, that will operate pro tanto as a defence to the claim of the trustee (*Davis v. Petrie* [1906] 2 K. B. 786). Where a debtor has made an assignment of his property to a trustee for the benefit of his creditors generally, the onus of proving the irrevocability of the deed lies on the trustee, who has to show that it has been communicated to a creditor, and assented to, or at least, not dissented from, by him (*Adnutt v. Hands* (1887) 57 L. T. 370). A creditor who relies on another act of bankruptcy may petition and obtain a receiving order, when a deed of assignment has been executed as to which he did not act so that he was bound by it in any way (*In re A. W. Mills and Co.* (1905) 13 Mans. 9). It is a most improper clause in a deed or assignment which enables the trustee or committee of inspection to directly offer a bribe to any creditor to induce him to assent to the deed. (*In re Brindley* [1905] 13 Mans. 1).

A secured creditor, who has notice of an act of bankruptcy by his debtor is not entitled, before the expiration of three months, to receive payment of the debt from his debtor, and consequently the debtor cannot make a good tender to the creditor and require him to give up his securities to the debtor on payment of the amount due (*Ponsford, Baker and Co. v. Union of London Bank* (1906) 2 Ch. 444). The reason is that "nothing is more firmly established in bankruptcy law than that a man who has committed an act of bankruptcy is not entitled to deal with his estate. He has no right to gather it in if it is not already in his hands or to make payment to his creditors out of that which he has actually at his command. He can give no good discharge to a debtor who pays him with notice of the act of

bankruptcy, because the debt may by subsequent bankruptcy proceedings be turned into a debt due to his trustee and not to himself. This is a principal and fundamental part of our bankruptcy administration": (Per Fletcher Moulton, L. J. *Ibid*). But "a protected transaction" under section 49 of the Bankruptcy Act, 1883, is good against the trustee in bankruptcy, provided it takes place before the date of the receiving order, and the creditor at the time of the payment has no notice of any act of bankruptcy committed by bankrupt before that time (*In re Dunkley* [1905] 2 K. B. 683). But a payment is not "a protected transaction" under section 49 of the principal Act, when it is not made in good faith, when it is contrary to the policy of the bankruptcy law, and amounts in effect to a common law fraud (*In re Badham*, 10 Morr. 252). It has long been a settled principle of bankruptcy law that an act of bankruptcy must not be concerted collusively between the bankrupt and a particular creditor (*Marshall v. Barkworth* (1833) 4 B. & Ad. 508, 512, 513). In such cases the party who colluded with the bankrupt may or may not be bound (*Ex parte Stray* (1867) L. R. 2 Ch. 374, 381), but he cannot rely on it as an act of bankruptcy. A debtor having called his creditors together proposals were made as to a composition. The creditors insisted on an assignment of the debtor's property to trustees for their benefit. He refused to make it; but after the meeting had broken up, he executed such an assignment. One of the creditors was present during the preparation of this assignment, and, though he denied having been present at its execution, the Court came to the conclusion that he had acquiesced in its being executed, and taken a benefit under it, by having the property protected from execution. It was held that he could not avail himself of the deed as an act of bankruptcy, although it might be he had not so far assented to it as to be bound by its provisions.

Other cases establishing that an assignment for the benefit of creditors generally cannot be relied upon as an act of bankruptcy by any one who is a party or privy to it are the following.

In *Jackson v. Irvine* (1808) 2 Camp. 49, Lord Ellenborough held that an assignee who was a party to a deed of assignment by which a trader assigned all his stock in trade to him, could not be a petitioning creditor.

In *Oliver v. King* (1856) 25 L. J. Ch. 427 it was held a creditor could not impeach a voluntary settlement, prepared with his concurrence, and under his direction, though it left the debtor's estate insolvent, when he had acted on it for seven years.

A deed of assignment by a trader of all his property to a trustee for the benefit of his creditors was not an act of bankruptcy on which a dissentient creditor might petition who had written to the trader and to the trustee of the deed, recommending the latter to proceed to a sale, and to the former requesting a bill of the intended sale in order that he might attend (*Ex parte Alsop, in re Rees* (1860) 29 L. J. Bky. 7).

A creditor who himself or by his agent calls on his debtor to execute an assignment of all his property for the benefit of his creditors, in pursuance of an agreement by the debtor to do so in a certain event, cannot avail himself of such an assignment as an act of bankruptcy by the debtor (*In re Adamsen* (1895) 2 Mans. 153). In order to support an allegation that the creditor has acquiesced in or submitted to the deed, it is not sufficient to shew merely that such creditor had notice of its execution; but it must also be shewn that he intentionally took advantage of the deed having been executed (*In re Michael* (1891) 8 Morr. 305). When the hearing of a petition is dismissed on the ground that the petitioning creditor had assented to the deed of assignment which he relied upon as the act of bankruptcy, the proper order to be made is that the petition be dismissed without costs (*In re Smith* (1889) 6 Morr. 30). A creditor may, without executing or expressly assenting to a deed of assignment by his debtor, nevertheless so acquiesce in it tacitly by conduct, e. g., by supplying goods to the trustee of the deed, as to estop himself from setting up the assignment as an act of bankruptcy. If a circular convening the meeting to consider a proposed deed of assignment is part and parcel of the scheme, the creditor so estopped cannot rely upon it as a notice of suspension constituting an act of bankruptcy.

While a creditor cannot rely on a conveyance or assignment of the debtor to which he has been party or privy, it is nevertheless necessary that the assent of the creditor should be obtained without fraud or misstatement. Thus, where a creditor had given his consent to the execution of a deed of assignment, which

gave a priority to the solicitor of the debtors, induced by grave misstatements as to the amount of the assets, it was held that he was entitled to present a bankruptcy petition against the debtors, and that a receiving order must be made against them (*In re Tanenberg* (1889) 6 Morr. 49). Although a creditor gives his assent to a proposal of the bankrupt to assign his effects for the benefit of his creditors, yet, if the deed contains an unexplained stipulation in favour of a particular creditor, the first mentioned creditor is not bound by the deed, but may treat it as an act of bankruptcy. A creditor can only consent to a deed of assignment for the equal benefit of all the creditors; and therefore he cannot be presumed to have assented to a deed which is very different from the common form of such a deed, as where it gives the attorney a prior claim to the payment of all the costs already incurred, or to be incurred, in the defence of the pending action (*Ex parte Marshall* (1841) 1 M. D. & D. 575). A creditor whose consent to a deed of assignment has been obtained by misstatement thus stands in a very different position from a creditor who by assenting to the proposal of the debtor induces him to commit an act of bankruptcy; as the first can present a petition, while the second cannot.

The acquiescence, assent, or submission rendered by a creditor to a debtor's deed of assignment, may be proved by showing that he intentionally took advantage of it, and must be proved by much stronger evidence after than before the execution of the deed (*In re Michael* (1891) 8 Morr. 305). The acquiescence of a creditor to a debtor's deed of assignment, which will prevent the former relying on it as an act of bankruptcy, may be by conduct only; the creditor may never have signed the deed. Acquiescence is a question of fact, and a creditor's conduct is sufficient to estop him from presenting a petition based on such assignment as an act of bankruptcy (*In re Hawley* (1897) 4 Mans. 41; per Vaughan Williams, J., referring to *In re Stray* (1867) L. R. 2 Ch. 374; and *Ex parte Alsop* (1860) 29 L. J. Bky. 7). A creditor estops himself from setting-up an assignment as an act of bankruptcy, where, after the execution of the deed, he goes to the trustee of the deed of assignment and negotiates with him about the lease of the debtor's premises, and supplies goods to the trustee, and receives payment for them out of what he knows to be the estate of the bankrupt from the trustee's own hands (*In re Woodroff* (1897) 4 Mans. 46). Vaughan-Williams, J., has considered that, "it would be a most unwholesome thing if the creditor, though precluded from taking advantage of the resolution at the meeting (because he has acquiesced in the deed of assignment), could go behind the meeting and say, "I will take advantage of the notice of meeting, because it involves a notice of suspension" (*In re Hawley* (1897) 4 Mans. 41, 45). It makes no difference whether a creditor who has acquiesced so as to estop himself from presenting a petition based on a deed of assignment, seeks to rely, in the alternative, on a circular as a notice of suspension, which has been issued before or after the execution of the deed of assignment. In either case the reliance will be ineffectual.

Fraudulent conveyance, gift, transfer etc. A debtor commits an act of bankruptcy, "if in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;" (Bankruptcy Act, 1883, s. 4, (1) par. b). This subsection has appeared in substance in every Bankruptcy Act for the last eighty years. An explanation of the definition of this act of bankruptcy shows that the conveyance must be fraudulent as against creditors, and therefore does not necessarily comprise every conveyance that may be executed by a person in embarrassed circumstances. A debtor, for instance, may make a fraudulent conveyance with intent to defraud a purchaser; "but it would be absurd to treat such an act as an act of bankruptcy". It is necessary, therefore, to imply the words, "fraudulent against creditors". In order "to avoid artificial contrivances of law", certain words inserted in previous Acts, "with intent to defeat or delay creditors", have been omitted. These words often compelled a jury to find contrary to the actual fact, that there had been intent to defraud (*In re Wood* (1872) L. R. 7 Ch. 302). As to the history of acts of bankruptcy of this nature, see Williams on Bankruptcy p. 9. Fraudulent conveyances against creditors were first restrained by statute in 1603 (Stat. 1 Jac. 1 c. 15), but for two centuries and a quarter the only conveyances against creditors which were acts of bankruptcy were fraudulent grants or conveyances by deed.

In 1825 this was altered by the Statute 6 Geo. IV. c. 16; but doubts arose under subsequent Acts whether fraudulent preferences had been rendered acts

of bankruptcy in all cases. Thus, in one case, it was held that the act of the debtor in drawing out a balance from his bankers for the purpose of defeating a creditor who was suing him, and paying it to another creditor, was a fraudulent preference (*Ex parte Halliday* (1873) 8 L. R. Ch. 283). In another case, it was held under the same statute, that a voluntary preference of a creditor, though it can be set aside as a fraud on the bankrupt law, is not an act of bankruptcy (*Ex parte Stubbins* (1881) 17 Ch. D. 58).

But now by par (c) of section 4 (1) of the Bankruptcy Act, 1883 fraudulent preference is an act of bankruptcy. It is a consequence of this that by section 43 of the Act there is a relation back of a trustee's title. This prevents an adjudication in bankruptcy being avoided by a proof of a fraudulent transfer prior to the act of bankruptcy on which the petition was founded.

Classes of fraudulent assignments. It is observed in Williams on Bankruptcy (p. 10), that fraudulent assignments may be divided into two classes: — First. Fraudulent assignments at the Common Law, or under 13 Eliz. c. 5. Second. Fraudulent assignments under the bankruptcy statutes, which latter may be divided into:

1. Fraudulent assignments of the whole of a debtor's property.
2. Fraudulent assignments of a part of the debtor's property.

The distinction between the two classes is more of degree than of kind, as they comprise the same classes of acts in a number of cases, but they are not mutually co-extensive. There may be a good consideration for the deed under the 13 Eliz. c. 5, as where the consideration consists of a pre-existing debt and further advances, in other words, a past consideration, which prevents the statute applying. But a conveyance executed by a debtor in return for a past consideration, which in other respects is a fraudulent preference, is not good under the bankruptcy law, but constitutes an act of bankruptcy. On the principle that a transaction void in itself, under the general policy of the law is so without limit of time, transfers under the 13 Eliz. c. 5, remain fraudulent after any lapse of time; but if three months elapses from the execution of the conveyance without any bankruptcy petition being filed, it cannot be impeached as an act of bankruptcy.

Twyne's case is the authority on what assignments are fraudulent at common law, or under the Stat. 13 Eliz. c. 5 (Twyne's case, Mich. 44 Eliz. In the Star Chamber, reported 3 Coke 80.) By the Statute 13 Eliz. c. 5 (made perpetual by 29 Eliz. c. 5), all feoffments, gifts, grants etc. made with intent to delay or defraud creditors were made utterly void, but the Act was not to extend to estates in land lawfully conveyed to *bonâ fide* purchasers for good consideration without notice. In Twyne's case the issue was directly raised under the Statute whether a general deed of gift, made by a person who was largely indebted to two others, of all the former's goods and chattels, to one of the creditors, in secret, was a fraudulent gift, when the debtor not only continued in possession of the goods, but actually sold some to third parties, and shorn sheep which had been included in the gift, and marked them with his own mark. The whole court of Star Chamber resolved that the gift was fraudulent, because:

1. It was a general gift, *quod dolosus versatur in generalibus*.
2. The donor Twyne continued in possession of the goods.
3. The gift was secret, *et dona clandestina sunt semper suspiciosa*.
4. The gift was made pending a writ issued in an action of debt by another creditor.
5. There was a trust between the donor and the donee, "and trust is the cover of fraud".
6. The deed of gift recited that the gift was made honestly, truly, and *bonâ fide; et clausulae inconsuetæ 'semper inducunt suspicionem'*.

Transfers which are fraudulent under the 13 Eliz. c. 5 are acts of bankruptcy under the bankruptcy law, and void as against the trustee in bankruptcy; *Doe v. Ball* (1843), 11 M. & W. 531; *Billiter v. Young* (1856), 6 E. & B. 1, 17. The statute is still considered to be in force, though by section 7 it was limited to the end of the first session of the next Parliament, and the Statute making it perpetual has been repealed. It may be remembered that the statute 27 Eliz. c. 4 is in *pari materia* with the 13 Eliz. c. 5, and is perhaps a more beneficial enactment than the previous statute, for it has been laid down, that at common law no fraud was remedied which should defeat a subsequent purchase, but only

that which was committed to defraud a former interest; *Cro. Eliz.* 445. The words of the Act of 1584 (27 Eliz.) are very large and comprehensive. They include every "conveyance, grant, charge, lease, estate, and limitation of use". Therefore, it was held that the uses declared on a recovery might be void as against a subsequent purchaser, though the recovery itself remained valid and destroyed an estate tail for his benefit, *Doe v. Rolfe* (1838), 8 A. & E. 650; *Tarleton v. Liddell* (1851), 17 Q. B. 390. Copyholds are within this Act, *Doe v. Bottrill* (1833), 5 B. & Ad. 131. So are equitable interests, *Barton v. Vanheythayzen* (1853), 11 Hare, 126. But not personal property, *Jones v. Croucher* (1822), 1 Sim. & S. 315; *Sugden. Vend.* and P. 14th ed., 719; see *Halifax Bank v. Gledhill* [1891] 1 Ch. 31, 39.

The 27 Eliz. c. 4 was amended by an Act passed in 1893 (56 & 57 Viet. c. 21), by which it was provided, that voluntary conveyances, if in fact made *bonâ fide* and without any fraudulent intent, should not be deemed fraudulent within the 27 Eliz. c. 4.

Assignment or mortgage of substantially the whole of debtor's property. As a general proposition, to which however modern bankruptcy law has introduced limitations, the assignment of the whole of a debtor's property for the benefit of one creditor, or several, to the exclusion of others, is fraudulent, the necessary consequence of such an assignment being to defraud creditors (*Worsley v. de Mattos* (1758) 1 Burr. 467; *Ex parte Luckes* (1872), L. R. 7 Ch. 302). But the transfer of the whole of a debtor's property is not fraudulent, and therefore is not an act of bankruptcy within par. b. of s. 4 (1) of the Bankruptcy Act, 1883, when it is either the case of a sale of all a trader's property (*Rose v. Haycock* (1834) 1 A. & E. 460; *Baxter v. Pritchard* (1834) 1 A. & E. 456; *Lee v. Hart* (1856) 11 Ex. 880), or a mortgage or an assignment not by way of sale in the ordinary course of business of all his property (*Whitwell v. Thompson* (1793) 1 Esp. 68). In a recent case (*In re Harris* (1906) 14 Mans. 127) it was held, under the following circumstances, that the transfer of a bankrupt's business was not a fraudulent conveyance within section 4, (1) (b), of the Bankruptcy Act, 1883, and should not be set aside as void against the trustee in bankruptcy. A trader being in difficulties transferred his assets to a company in the *bonâ fide* hope of thereby benefiting his creditors. His assets were estimated at £2000, and his debts at £1000. The consideration for the transfer was an undertaking by the company to pay his debts and the allotment of ninety-four shares and debentures of the nominal value of £1000. The debentures could not be enforced until interest was two months overdue—i. e., eight months from their issue, or until execution was put in against the company. In a case (*Smith v. Harris* (1853) 2 E. & B. 35) which was quoted in *In re Harris*, it was held by the Exchequer Chamber, that the necessary consequence of an assignment of what is substantially all the trader's property is to delay his creditors, and that the existence of a resulting trust, and of a substantial surplus, does not prevent its having that effect; and that a conveyance necessarily delaying a trader's creditors is an act of bankruptcy, though it has not the effect of stopping his trade; and that a transaction, being itself an act of bankruptcy, is not protected, though made with a party who has no notice of the circumstances making it an act of bankruptcy.

It was long held that a mortgage or assignment of the whole of a trader's property was an act of bankruptcy when the consideration for the assignment was wholly or partly an antecedent debt contracted without security, unless its object was to secure a present, or present and future advances (*Graham v. Chapman* (1852) 12 C. B. 85; *Bittleston v. Cook* (1856) 6 E. & B. 296; *Hutton v. Grutwell* (1852) 1 E. & B. 15). But it is now established by a long line of cases (*Pennell v. Reynolds* (1861) 11 C. B. N. S. 709 to *Merccer v. Peterson* (1868) L. R. 3 Ex. 104; *Lomar v. Buxton* (1871) L. R. 6 C. P. 107), that a mortgage or assignment is not necessarily and as a conclusion of law an act of bankruptcy when it is made partly in consideration of an existing debt, and partly as a security for a further advance, because "it is obvious that when there is a substantial exception out of the debtor's property (and a substantial advance is considered as a substantial exception out of the debtor's property), such an exception as might possibly enable him to carry on his trade with advantage, a conveyance cannot come within the rule of law above referred to (*Lord Mansfield in Worsley v. De Mattos*. 1 Burr. 467) as being, necessarily and by force of law, without reference to extrinsic circumstances shewing fraud, an act of bankruptcy (Cf. the observations of Willes,

J., in *Lomax v. Buxton* (1871) L. R. 6 C. P. 107, 112). The principle that the mortgage or assignment of the whole of a trader's property is not an act of bankruptcy when it is made partly as a security for a further advance, has been held to apply to a case where the advance was wholly future, i. e. where the advance consisted of debentures which could not be enforced until interest was two months overdue—i. e., eight months from their issue, or until execution was put in against the company (*In re Harris* (1906) 14 Mans. 127).

Forbearance to seize under an execution, or to seize under a bill of sale, is not a sufficient equivalent to prevent a subsequent bill of sale over the whole of a debtor's property, to secure an antecedent debt without any present advance, from being an act of bankruptcy (*Woodhouse v. Murray* (1868—9), L. R. 4 Q. B. 27; *Ex p. Cooper, re Baum* (1879), 10 Ch. D. 313; *Ex p. Payne, re Cross* (1879), 11 Ch. D. 539; practically overruling *Philps v. Hornstedt* (1876) 1 Ex. D. 62). A debtor, against whom a judgment debt has been obtained, or who has executed a bill of sale, is not considered by implication to have given a subsequent bill of sale for a new advance, but merely for a past advance. Whether a real present advance is a good consideration which will save an assignment of the whole of the debtor's property from being an act of bankruptcy depends on the further question whether the advance is made by the lender with the intention of enabling the debtor to continue his business. In the case of *In re Ree's Bankruptcy* [1894] A. C. 135, an advance was made by a creditor contemporaneously with the debtor's executing a bill of sale comprising substantially the whole of his available property, in order to enable the debtor to carry on his business, and in the reasonable belief that he would do so. It was held in the Privy Council that the assignment was not an act of bankruptcy, there was not any doubt as to the law to be applied (per Lord Macnaghten, p. 139), and that the decisions of the Court of Appeal in England in *Ex parte King* (1876) 2 Ch. D. 256; *Ex parte Ellis* (1876) 2 Ch. D. 797; *Ex parte Johnson* (1884) 26 Ch. D. 338 were in point. In *Ex parte King*, Mellish L. J., observed that "the numerous cases on the subject have settled the law. The only difficulty is in the application of it. An assignment of all a debtor's property for a past debt is an act of bankruptcy. A merely nominal exception of part of the property will not prevent this, but an exception of a substantial part will prevent it. Whether an exception is substantial must of course depend on the circumstances of the case. If the assignment includes all the property, and is made in consideration of a past debt and of a further advance made at the time, the further advance, if substantial, has the same effect as a substantial exception out of the property" 2 Ch. D. 256, 263). In that case an assignment was considered not fraudulent, and therefore not an act of bankruptcy, where it was made in consideration of a past debt of £800, and of a further advance of £150, by a debtor whose assets were worth about £700; and whose liabilities amounted to nearly £2000. The amount of the further advance, it is obvious from the above case, is not the test whether an assignment of all his property by the debtor constitutes an act of bankruptcy; it need not be proportionate to the property charged, nor equal to the existing debt, the sole question which is relevant is whether the advance was made with the intention of both parties that the debtor should go on with the business (*Ex parte Ellis* (1876) 2 Ch. D. 797, 798). A parol agreement to give a bill of sale does not require registration under the Bills of Sale Act, 1878, and a bill of sale given in pursuance of such an agreement is not void under the Act by reason of the non-registration of the agreement. A bill of sale is not void as an act of bankruptcy which assigns the whole of the grantor's property, including that which he may purchase by means of the advance, to secure an existing debt and a present advance (*Ex parte Hauxwell* (1883), 23 Ch. D. 626; overruling *Graham v. Chapman* (1852) 12 C. B. 85).

A rigid and logical application of the principle that an assignment by a debtor of the whole of his property is fraudulent and constitutes an act of bankruptcy unless it is made in consideration of an advance which is intended to enable him to carry on his business explains most, if not all, the decisions on the subject. It is, for instance, merely a logical deduction from this principle that it should have been established by a current of decisions that an assignment in consideration of a present advance to pay off existing debts is an act of bankruptcy though it may not be fraudulent. In *Whitmore v. Claridge* (1862) 31 L. J. Q. B. 31, a debtor executed a bill of sale assigning all his property as a security for an advance, and

was then adjudicated a bankrupt on the petition of another creditor. Two days before the debtor was adjudicated, the assignee of the bill of sale sold the goods, and in an action brought by his assignees, it was held that the granting of the bill of sale was an act of bankruptcy, but that it was not fraudulent, as, under the circumstances, the debtor received value for his goods. In *ex parte Zwilchenbart* (1844) 3 M. D. & D. 671, it was held that an assignment of all the property of traders, in consideration of the assignees giving promissory notes to the traders' creditors, was not a sale, but an act of bankruptcy, because by it all the joint property of traders who had little or no separate property, was disposed of for the purposes of a composition, which was not acceded to by all the creditors. In *re Wilkinson* (1881) 17 Ch. D. 58, the facts (which were few and not in dispute) were that within three months before the filing of a liquidation petition the debtor, who was one of the executors of a will, sold some goods to his co-executor with the intention of applying the purchase-money in repaying to the testator's estate money which he had improperly abstracted from it. This intention was known to the co-executor, and the purchase-money was, with his knowledge, immediately after its payment by him, paid by the vendor into a bank to the credit of the executors. It was held by the Court of Appeal that the transaction was not either a fraudulent preference within the Bankruptcy Act, or a fraudulent transfer of property, and that neither the executor nor the testator's estate could be compelled to refund the money. In this case James L. J., observed that a mere voluntary transfer is not of itself an act of fraud, and therefore a sale does not become fraudulent or an act of bankruptcy when both the vendor and the purchaser intend that the purchase-money is to be applied for the purpose of making a voluntary preference. The sale of goods in *re Wilkinson* (supra) and the subsequent application of the purchase-money was not a voluntary preference of a creditor, as there was doubt whether a trust estate can be called a creditor. If a debtor on the eve of insolvency, and just before he becomes bankrupt, sells goods in order that he may restore money which he has stolen from his master or from anybody else, it is impossible to hold that such a payment can be treated as a fraudulent preference of a creditor.

A conveyance is deemed fraudulent under par. b. of ss. (I) of section 4 of the Bankruptcy Act, 1883, within the policy of the bankruptcy law, as necessarily defeating and delaying creditors when:

1. It comprises substantially the whole of the debtor's property.
2. It is in consideration of a past debt.
3. There is no fair present equivalent.

First as to the conveyance or assignment being an act of bankruptcy under par. b when it comprises substantially the whole of the debtor's property. Such an assignment constitutes an act of bankruptcy where if acted on, it would produce insolvency, or, where the debtor is a trader, stop his business, although there may be a portion excepted (*Ex parte Foxley* (1868), L. R. 3 Ch. 315, *Young v. Wand* (1853) 22 L. J. Ex 27). A substantial exception to the assignment of the whole of a debtor's property preventing it being an act of bankruptcy arises in the case of book debts, if substantial in amount (*Ex parte Burton*, (1879) 13 Ch. D. 102). In this case however the book debts were not actually taken into account, Bagallay observing that "only a few pounds had been realized from the book debts, and that a long time would have to elapse before such as could be recovered would be realized. On the other hand, leaseholds, though excepted from the operative part of an assignment of all the remainder of a debtor's property, if the debtor covenants to stand in trust to convey and assign as the trustees of the deed should direct, do not form such a substantial exception out of the debtor's property as might enable him to carry on his trade, and therefore the assignment in such a case is an act of bankruptcy (*Ex parte Hughes*, [1893] 1 Q. B. 595; *Ex parte Viney* (1895), 43 W. R. 192). An assignment for a past debt by a partner in an insolvent firm of all his separate assets is fraudulent (*Ex parte Trevor* (1875) 1 Ch. D. 297). An assignment by a partner in an insolvent firm of the partnership assets to secure his private debt and future advances, is fraudulent as against the creditors of the partnership, and an act of bankruptcy (*Ex parte Snouball, re Douglas* (1872) L. R. 7 Ch. 534). An exception of tenant right from an assignment by a farmer does not constitute a substantial exception from all his property so as to enable him to carry on his business and prevent the assignment

from being an act of bankruptcy, though the tenant right may be of considerable amount, since it could only be available at the expiration of the tenancy, and will then be subject to a prior claim by the landlord in respect of any breaches of covenant which may have been committed (*Ex parte Dann* (1881), 17 Ch. D. 76). An agent who, under the instructions of his principal, makes a payment of the latter's moneys which amounts to a transfer of the whole of the property of the principal, is not liable to the trustee in the principal's subsequent bankruptcy, when he was ignorant of the effect of the payment at the time he received the money, though he was aware of it at the time he made the payment (*Ex parte Helder, re Lewis* (1883), 24 Ch. D. 339).

Conveyance in consideration of past debt. There can be no doubt as to the principle that a conveyance etc. is deemed fraudulent if it is in consideration of a past debt. The proposition stands in its integrity as far as colourable exceptions are concerned (*Pennell v. Reynolds* (1862), 11 C. B. N. S. 709; *Lomax v. Buxton* (1871) L. R. 6 C. P. 107). Nor will the exception of any property (however large in amount) of the debtor which could not be taken in execution, and which would not pass to the trustee, affect the rule (*Ex parte Hawker, re Keely* (1872), L. R. 7 Ch. 214). Whether an assignment or conveyance by a debtor is subject to only a colourable exception as regards his total assets depends on the question whether, if acted on, the assignment or conveyance would produce insolvency, in spite of the excepted property. An exception, however arises to the general principle that a conveyance or assignment of a debtor's whole property is an act of bankruptcy when it is in consideration of a past debt, in the case of a payment extinguishing a valid subsisting charge on the property (*Ex parte Harris* (1875), L. R. 19 Eq. 253; *Ex parte Mutton*, (1872) L. R. 14 Eq. 178).

According to the earlier cases a *bona fide* sale (*Baxter v. Pritchard* (1834), 1 A. & E. 456; *Wood v. Dixie* (1845), 7 Q. B. 892; for a fair present consideration, of the whole of a debtor's property does not constitute a conveyance or assignment which is fraudulent under par. b. of ss. (1) of section 4 of the Bankruptcy Act and is therefore not an act of bankruptcy, if the buyer has no knowledge of or ground to suspect the intention of the vendor merely to apply the purchase money in consideration of a past debt (*Baxter v. Pritchard* (1834), 1 A. & E. 456; *Lee v. Hart* (1854), 10 Ex. 555).

Fraudulent Preference. The next act of bankruptcy it is proposed to consider is that defined by the ensuing par. (c) of ss. (1) of section 4 of the Bankruptcy Act, 1883, in the following terms—"A debtor commits an act of bankruptcy in each of the following cases;—If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt". Fraudulent conveyances, which amount to fraudulent preferences, are made a special subject of enactment by section 48 of the Bankruptcy Act, 1883, by which they are deemed fraudulent and void as against the trustee in the bankruptcy. As fraudulent preferences conflict with the fundamental principle of the bankruptcy laws, i.e. the general distribution of the bankrupt's property amongst his creditors, it is consistent with the policy of those laws that they should be more penalized than formerly under the Act of 1869. This is done by lengthening the period of relation within which fraudulent preferences are to be deemed void if impeached, to three months prior to the presentation of the petition, and not merely, as previously, to three months prior to the adjudication in bankruptcy. This alteration would seem to extend the operation of the section (Cf. Williams on Bankruptcy p. 249). In calculating the period of the relation of the trustee's title, the day on which the petition was presented must be excluded (*In re Dawes* (1887), 4 Manson, 117).

The fraudulent preference section (s. 48) of the Bankruptcy Act, 1883, is to a great extent the embodiment of the old common law of bankruptcy. In a case which may be supposed to declare the old common law of bankruptcy, a debtor executed a deed, by which estates were conveyed in trust to sell, and to pay the pressing creditors, with a further trust to pay the debtor's debts to certain relatives, in order to give them an undue preference in contemplation of bankruptcy. Upon this deed Mansfield C. J., observed—"The question put to us is, whether this is an act of bankruptcy; a conveyance, either of all, or part of a man's property, in favour of fewer than all the creditors, is an act of bankruptcy, because it is the means whereby the creditors may be defeated or delayed". After giving the effect

of the deed, the learned judge inquired—"Is not this then a gift of estates to the value of £1000, to each of these persons, the mother and sister, to satisfy their claims and pay their debts, and so put those sums out of the reach of all other creditors? It is impossible therefore to say that this is not an act of bankruptcy": *Morgan v. Horseman* (1810) 3 Taunt. 240, 244—5. In another case which declares the old common law on the subject of fraudulent preference, a partner in a bank which had stopped payment the day before, enclosed in a letter he wrote to a client a bill of exchange for £300, the property of the bank, and it was held an act of bankruptcy (*Coming v. Baily* (1830) 6 Bing. 363.) It may be remembered that a transfer by a debtor of a part of his property in consideration for a past debt, though indubitably *ex facie* an act of bankruptcy is not necessarily prohibited under the 13 Eliz. c. 5, as tending to defeat or delay creditors. Anything which tends to withdraw a portion of a debtor's property from general distribution amongst his creditors is against the policy of the bankruptcy law. An assignment of a part of the debtor's property may be a fraud as against creditors, even though there be no preference of a creditor or creditors (Williams on Bankruptcy; p. 17). But no doubt fraudulent assignments of a part of a debtor's property mostly consist of fraudulent preferences (*Ibid.*). A recent case instances these principles. The bankrupt turned his business into a limited company, and "to use not accurate legal language but colloquial language, he was the company". There ensued a struggle between the bankrupt's creditors represented by his trustee in bankruptcy, and the company's creditors represented by the liquidator, as to which set of creditors should get the assets which the bankrupt purported to sell to the company. It was held that the transfer was fraudulent and an act of bankruptcy; that the title of the trustee to the business related back to the date of the transfer, and overrode the claims of the creditors of the company in the winding-up; and that the liquidator was bound to hand over to the trustee the assets representing the business at the time of the transfer (*In re Carl Hirth* [1899] 1 Q. B. 613). In this case Lindley M. R. (now Lord Lindley) observed that the case fell distinctly under s. 4 (1) b. of the Bankruptcy Act, 1883. He considered it was difficult to decide whether it fell under 13 Eliz. c. 5. To reach a transaction under that Statute "it must be shewn that the sale is of the whole, or substantially the whole, of the grantor's property; and it must be shewn that the grantee has notice that the grantor is cheating his creditors". But par. b. of s. 4 (1) of the Bankruptcy Act, 1883 "extends the Statute of Elizabeth enormously, because the modern enactment has not to consider whether the person who takes the property knows anything about the fraud, nor whether that which is transferred is the whole, or substantially the whole, of the debtor's property. It has to consider the debtor and what he has done; and if he has made a fraudulent conveyance, gift, delivery, or transfer of his property, or any part thereof, he has committed an act of bankruptcy".

But while transactions under the Statute of Elizabeth are "clearly and utterly void, frustrate and of none effect, s. 4 of the Bankruptcy Act, 1883, says nothing about void and voidable, but says that certain transactions shall be acts of bankruptcy. The difference between the two is that although a man may commit an act of bankruptcy he may never be adjudicated a bankrupt upon it. There is no answer to a trustee who finds there has been a fraudulent conveyance, which is an act of bankruptcy, and who elects to impeach the transaction and demands back the property from the person in whose possession it is, unless it is that it is a protected transaction (Bankruptcy Act, 1883, s. 49). *In re Carl Hirth*, *supra*. Vaughan-Williams, L. J., considered that the transferee company by its agent, the managing director, Hirth himself, had full notice of the true nature of the transaction, so as to bring itself within the operation of the Statute of Elizabeth ([1899] 1 Q. B. at p. 625).

The most essential difference between conveyances etc. which are merely void as acts of bankruptcy under pars. b. and c. of section 4 (1) of the Bankruptcy Act, 1883, and conveyances which are void by the Statute of Elizabeth, is not only that the former are only void if impeached by the trustee for the creditors, but also that they then are only void when executed within three months of the petition, whereas conveyances avoided by the Statute of Elizabeth are of no effect, *ab initio*, and for ever (See section 43 and section 6 (1) (c) of the Bankruptcy Act, 1883.

It seems probable that, at the common law, assignments of a part of the debtor's

property, apart from any question of preference, which have for their objects frauds on creditors, are acts of bankruptcy, though they are not avoided by the Act of Elizabeth, but there do not seem any cases establishing the proposition (Williams on Bankruptcy, p. 18; but cf. Baldwin on Bankruptcy, p. 123). Whether a transaction amounts to a fraudulent preference depends on the intention of the debtor, and not on the result of his payment. (Per Cozens-Hardy, J., *Re Stenotyper Co.* [1901] 1 Ch. 250.) It is not necessary that the intention of the debtor, when he makes the payment, to give the creditor a preference, should have been his sole intention; it is enough, in order that the payment should constitute an act of bankruptcy, that it should have been made by the debtor with the substantial, effectual, or dominant view of giving the creditor a preference (*Ex parte Hill* (1883), 23 Ch. D. 695; *Ex parte Griffith* (1883), 23 Ch. D. 69). But in order to constitute a fraudulent preference, the debtor must make the payment to the person intended to be preferred; if it is made to a surety, the transaction cannot be impeached as an act of bankruptcy (*In re Warren* [1900] 2 Q. B. 138). An assignment of part of a debtor's property, if made to prefer particular creditors, is fraudulent, and as such, an act of bankruptcy, when made in contemplation of bankruptcy (*Hale v. Allnutt* (1856), 25 L. J. C. P. 267; *Edwards v. Glyn* (1859), 28 L. J. Q. B. 350; *Bills v. Smith* (1885) 34 L. J. Q. B. 68.) A delivery, in order to constitute a fraudulent delivery or transfer, and an act of bankruptcy under this subsection, must pass or purport to pass some interest in the property (*Isitt v. Beeston* (1869), L. R. 4 Ex 159). A payment etc. by a debtor under a sense of legal obligation, which was entertained on reasonable grounds, and not with a view to prefer, is not an act of bankruptcy, and it is immaterial that the obligation did not in fact exist (*Ex parte Griffith* (1883), 23 Ch. D. 69). Where pressure is exerted on the debtor, in order to make him transfer or convey, the existence of a view on the part of the debtor to prefer is negatived (*In re Wilkinson* (1884), 1 Morrell, 65; *Ex parte Jenkins* (1885), 33 W. R. 523). But in order to negative preference, the pressure must have real influence; a threat to take civil proceedings against a debtor can have no real effect when he has announced his intention to become bankrupt immediately (*Ex parte Hall, re Cooper* (1882), 19 Ch. D. 580). No amount of subsequent pressure will negative preference (*Ex parte Reader* (1875), L. R. 20 Eq. 763). A partner who voluntarily assigns his separate estate to his separate creditors, commits an act of bankruptcy, by fraudulently preferring his separate over his joint creditors (*Ex parte MacLean* (1871), 24 L. T. 144).

Conveyance of property abroad. It is only property in England that can be fraudulently conveyed so as to constitute an act of bankruptcy under par. b., because since a *fi. fa.* can only be levied in England, a conveyance of property abroad will not in any way defeat or delay creditors (Williams on Bankruptcy p. 18; referring to *Ex p. Crispin* (1873), L. R. 8 Ch. 374; *Ex p. Defries* (1877), 35 L. T. 392). It is only property in England against which writs of execution can go out of English courts. It appears an undecided point whether the assignment by an English trader of all his available property in England, if he is in a general state of insolvency, is an act of bankruptcy, when he has some other property abroad, but it seems the answer is in the affirmative, at least in certain cases (*Ex parte Defries* (1876) 25 L. T. per Mellish, L. J. at p. 394). A deed, though imperfectly executed, may constitute an act of bankruptcy if the instrument be so far executed by the debtor as to shew on his part, by overt act, an intention, as far as he is concerned, to defeat and delay his creditors (*Bowker v. Burdekin* (1843) 11 M. & W. 128). The want of a stamp will not prevent the admission in evidence of a fraudulent deed for the purpose of proving an act of bankruptcy, because the object of the person who produces the deed is not to give it effect or to shew it to be a good deed, but, on the other hand to shew that the debtor has done what in law is a constructive fraud (*In re Gouldwell* (1868) L. R. 4 Ch. 47; *Ponsford v. Walton* (1868), L. R. 3 C. P. 167).

Departing out of England &c. The ensuing paragraph provides that a debtor commits an act of bankruptcy "if with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England or departs from his dwelling-house, or otherwise absents himself, or begins to keep house": (Bankruptcy Act, 1883, s. 4, (1) d). The words "Intent to delay" etc. only appear in this paragraph, and do not, as under the previous law, override all the other acts of bankruptcy. The consequence of

their insertion in this paragraph is that the debtor's intent to defeat or delay his creditors must be proved as a matter of fact; their omission as regards the other acts of bankruptcy has the effect of causing "the intent etc." to be a matter of inference. The intent to defeat and delay overrides this whole paragraph, so that in order to constitute an act of bankruptcy by keeping house, it is sufficient to shew that the bankrupt intended to delay his creditors, without shewing that any delay was actually occasioned (*Williams v. Nunn* (1808) 1 Taunt. 269, 276; per Mansfield, C. J., referring to *Robertson v. Liddell* (1808), 9 East, 487). When the act of departing out of England etc. has been proved by extrinsic evidence, the intent with which the act was done may be proved by the simultaneous declarations of the bankrupt (Per Lord Denman, C. J., in *Rouch v. Great Western Ry. Co.* (1841) 12 A. & E. 51, 60; such declarations are admissible on the principle that they are *pars rei gestae*.) In *ex parte Goater, re Finney* (1874) 30 L. T. 620, the facts were that a debtor before he went abroad arranged with all those creditors whom he wished to pay; but left two large creditors wholly unprovided for. It was held that the debtor must have known perfectly well that the necessary consequence of his departing from England was to defeat and delay these two creditors, as his departure rendered it impossible for them to issue debtor's summonses, or to adopt a summary process under the Bills of Exchange Act. — It must be inferred that a man intends the necessary consequences of his own acts; and it was held "in accordance with common sense", that the debtor departed from England with intent to defeat or delay his creditors. The petition must allege that the debtor departed from his dwelling-house, or otherwise absented himself, with intent to defraud or delay his creditors (*ex p. Coates, re Sketton* (1877), 5 Ch. D. 979). But an irregularity in a petition may be waived (*In re Urquhart* (1890), 7 Morr. p. 94). It is an abuse of the process of the Court of Bankruptcy, knowingly using it for an improper purpose, contrary to the plain meaning of the Act and the justice of the case, to treat the departure of a foreigner out of England as an act of bankruptcy, when though he owes some debts here, he is domiciled abroad, and does not trade and has no assets in England. There is no ground whatever in such a case for supposing a person is going away with the intention of avoiding his creditors. Where there is an intention to defeat and delay creditors, the departing out of England by the debtor is a continuous act, and the act of bankruptcy is complete although the debtor remains abroad (*Ex p. Bunney* (1857), 1 De G. & J. 309), unless he is a domiciled Englishman who has his permanent home abroad (*Ex p. Brandon*, (1884), 25 Ch. D. 500; *Re Campbell* (1887), 4 Morr. 198). According to the earlier decisions, the act of bankruptcy consisting in a debtor's absenting himself was confined to the case of a party absenting himself from his own regular place of business, at which he would be expected to be, or from one or more particular creditors at some other place; for instance, the Royal Exchange, where he expected to meet persons to whom he was indebted; going behind the scenes at the theatre, and so on (*Bernasconi v. Farebrother* (1830) 10 B. C. 549; and the observations of Lord Tenterden at p. 556.) But now in order to establish an absenting which will constitute an act of bankruptcy, it is not necessary to show actual physical absence from a particular place. A debtor would be absenting himself if he were to go to a meeting of his creditors in disguise (Cf. the observations of Williams, J., *In re Alderson* (1894) 1 Mans. 495, 497). The mere failure of the debtor to keep an appointment at the creditor's house for the purpose of paying a debt, has been held not to be an absenting, where the debtor was to be found at his place of business, and there was no proof of intent to defeat and delay. A long roll of cases all result in this, that a man's intentionally keeping away from any place where he would, in the ordinary course of things, be, is absenting himself. But a debtor's absenting himself is no act of bankruptcy unless it be with intent to defeat or delay his creditors; and whether that intention exists is a question of fact, as much as in any criminal case where the intent is necessary to prove the crime. A debtor who fails to keep an appointment at a creditor's house cannot be supposed to have imagined that he was gaining a minute's time by so doing, as there is not anything more likely than another to accelerate a creditor's movements than a debtor's not coming to pay a debt when he has promised to do so. (*In re Stephany* (1871) 1 R. 7 Ch. 188).

"In a very singular case", a person absented himself without any assignable motive, being probably solvent, and was adjudicated a bankrupt six months afterwards, but a month later, his death was presumed in the Probate Division. In the

Court of Appeal, the adjudication was annulled, because the Court were not satisfied that the man was alive, notwithstanding the ordinary presumption in favour of life for seven years. A person who says that another has committed an act of bankruptcy is bound to prove it affirmatively, and in the case alluded to it was considered that the missing man was probably dead even at the date of the presentation of the petition. Jessel, M. R., observed in this case that "if you say a man has left his dwelling-house you must shew that he is somewhere" (*In re Stanger* (1882) 22 Ch. D. 436, 438). In another case, which was differentiated from the preceding by the debtor being in very embarrassed circumstances when he went away, the Court held that it was not bound to presume that the debtor was dead: and that substituted service of a bankruptcy petition presented against the debtor alleging the departure of the debtor as an act of bankruptcy, would be allowed by advertisement of such petition in certain specified local and London newspapers (*Ex parte Becker* (1893) 10 Morr. 141).

Seizure of goods in execution. The next act of bankruptcy it is necessary to consider has altered the law as laid down in the principal Act of 1883. It is now made an act of bankruptcy if the sheriff, after seizure, holds the debtor's goods for twenty-one days (The Bankruptcy Act, 1890, s. 1). Previously, in order that an act of bankruptcy should have been committed, it was necessary that the goods should have been sold after having been seized under an execution levied. It is considered a payment under pressure, and therefore not an act of bankruptcy, for the debtor to pay the sheriff's officer the amount of the debt with the assent of the judgment creditor (*Ex p. Brooke, In re Hassall* (1874) L. R. 9 Ch. 301). But if notice of the petition having been presented against the debtor is served on the sheriff within fourteen days of the payment and a receiving order follows, the trustee and not the judgment creditor will now by virtue of the Bankruptcy Act, 1890, s. 11, (2), be entitled to the amount paid. Where the sheriff sells for more than £20, the sale must, by section 145, be by public auction, unless otherwise ordered by the Court from which the process issued. An application to sell by private treaty, by section 12 of the Bankruptcy Act, 1890, will not be considered by the Court unless notice is given to the other execution creditor or creditors, who may appear before the Court and be heard upon the application.

Declaration of inability to pay debts. A debtor commits an act of bankruptcy "if he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself" (Bankruptcy Act, 1883; s. 4, (1) par. f). It is a perfectly valid contract, not contrary to the bankrupt laws, for a debtor to covenant not to file any declaration of insolvency while he remains in possession of goods with the consent of the creditor. When a man has contracted not to do an act he will not be deemed to have broken his contract merely by doing an act, the indirect consequence of which is to bring about the effect it is intended to guard against. Therefore a debtor may incur a debt, for which a judgment is recovered, under which the very goods are taken in execution, in respect of which he has previously covenanted to another creditor that he would not do any act by means of which they might become assigned or alienated from the former (*Hill v. Cowdery* (1856) 25 L. J. Ex 285). The filing of a declaration of inability to pay by a debtor is complete on the delivery of the document by a properly authorized person to the proper officer at the proper office, with intent that it should be filed or placed on record in the ordinary manner (*Ransford v. Maule* (1873) L. R. 8 C. P. 672).

Non-compliance with bankruptcy notice. As to the next act of bankruptcy the Bankruptcy Act, 1883, s. 4, (1) par. g, as amended by the Bankruptcy Act, 1890, s. 1.

Makes non-compliance with a bankruptcy notice served by a creditor who has obtained final judgment, and where execution has not been stayed, an act of bankruptcy. The words "final judgment" must be construed strictly, and "judgment must be judgment in an action in England". A creditor who has obtained a final judgment "must be a person who is in a position to issue execution upon the final judgment" (Per Baggallay, L. J., in *In re Wodall* (1884) 13 Q. B. D. 479, 482). Therefore the representative of the original creditor or his assignee must obtain leave to issue execution, before either of them can fill the character of a creditor who has obtained a final judgment within the meaning of the paragraph. In *In re Ide* (1886) 17 Q. B. D. 755, 760, Bowen, L. J., in construing the paragraph observed that "We must look carefully at the words to see if there is not an implication to be found in them, and it seems to me that, from the collocation of the words 'final judgment'

and 'execution thereon not having been stayed', a necessary implication arises of this character, viz., that the creditor must not merely have obtained a final judgment but must be in a position to issue immediate execution upon it". In that case it was held that a creditor is not a creditor who has obtained final judgment, when he has obtained judgment against a firm, but seeks to issue execution against the private property of a member of the firm without the leave of the court. It was held that as against the private property of the partner, the creditor could not obtain a final judgment because the judgment was not one upon which execution could go immediately.

In *In re Ford* (1886) 18 Q. B. D. p. 369 the question was whether execution had been stayed so as to prevent the judgment creditor from serving a bankruptcy notice on the debtor. The creditor had both obtained judgment and issued execution, but the sheriff withdrew from possession, after levying execution, under an interpleader order. It was held that execution on the judgment had been stayed within the meaning of s. 4, (1) of the Bankruptcy Act. Cave, J., held there was in substance a stay of execution until the issue in the interpleader was decided, for until then the sheriff could not know whether to make a return of *fieri feci* or *nulla bona*. Again, Cave, J., pointed out that a bankruptcy notice must require the debtor to pay the judgment debt in accordance with the terms of the judgment, and the notice could not comply with this provision so long as the interpleader was undecided. The general and safe definition of "a creditor who has obtained a final judgment" is "a person who is in a position to issue execution upon the final judgment". The original judgment creditor is in that position, if there has been no stay of execution.

The words "final judgment", and execution thereof not having been stayed are to be construed strictly, because "words found in a section of an Act of Parliament which is defining acts of bankruptcy should be construed strictly as if they occurred in a section defining a misdemeanour, because the commission of an act of bankruptcy entails disabilities on the person who commits it" (*Ex p. Chinery* (1884) 12 Q. B. D. 342, 346).

What is a final judgment. For the purposes of the bankruptcy law, orders of a Court or judge, which are made "final judgments" by Ord 42, r. 24 of the Rules of the Supreme Court are not "final judgments for the purposes of that law". A long line of decisions has established that orders of various kinds are not "final judgments" for the purposes of a bankruptcy notice. Thus neither a garnishee order absolute (*Ex p. Chinery*, (1884) 12 Q. B. D. 342), nor an order by consent to pay taxed costs within a limited time, the action being stayed on these terms before judgment (*Ex p. Schmitz, re Cohen* (1884), 12 Q. B. D. 509), nor "a balance order" for payment of calls in a voluntary winding-up (*Ex p. Whinney re Sanders* (1884), 13 Q. B. D. 476), nor an order dismissing an action for want of prosecution, and ordering the plaintiff to pay the costs (*Re Riddell* 1888, 20 Q. B. D. 512), nor an order for alimony pendente lite (*Re Henderson* (1888), 5 Morr. 52), nor an order for payment of costs by a co-respondent (*Re Binstead* (1892), 9 Morr. 319), nor an order made on a petition revoking a patent and ordering the respondent to pay the costs (*Re Owen* (1901), 8 Mans. 24), nor an order in bankruptcy declaring an assignment void as against the trustee, and directing the assignee to pay the costs of the motion (*Ex p. Official Receiver* [1895] 1 Q. B. 609), nor an order made under the Arbitration Act, 1889, that an award be enforced and that judgment be entered in accordance therewith (*In re a Bankruptcy Notice* (1906) 14 Mans. 1), constitutes a final judgment for which a bankruptcy notice can be issued.

But in *Re G. J.* (1905) 12 Mans. 354, it was held that a bankruptcy notice was well issued when it was issued for payment of a sum of money recovered under a final judgment in the King's Bench Division and costs to be taxed. Final judgment means a judgment obtained in an action by which a previously existing liability of the defendant to the plaintiff is ascertained or established for the purposes of bankruptcy law; there can be no final judgment if a defendant has not had the opportunity of setting up a counterclaim, set-off, or cross demand. If a defendant has committed a tort, there is a previously existing liability on his part to the plaintiff. In *re G. J.* the defendant broke an agreement not to carry on business as a solicitor within certain limits of space, and therefore was under a previously existing liability arising out of his covenant contained in the partnership deed. An order for the payment of costs does not enforce a pre-existing liability of a defendant, but it may

form part of a final judgment which does, as in the case of *In re G. J.* In this case Vaughan Williams L. J., pointed out that if the series of cases in which it has been held that in order to support a bankruptcy notice there must be what is called a final judgment, are examined, it will be found that there is no decision that a bankruptcy notice cannot be issued for a judgment debt simply because the judgment includes also costs to be taxed, and the costs have not been taxed, though you cannot issue a bankruptcy notice when you have a right to issue execution on what is called an order as distinguished from a final judgment.

In *ex parte Moore* (1885) 14 Q. B. D. 627, 632; the Earl of Selborne, L. C., observed that—"To constitute an order a final judgment nothing more is necessary than that there should be a proper *litis contestatio*, and a final adjudication between the parties to it on the merits". In that case judgment was given for the plaintiff in an action for breach of covenant, with taxed costs, and damages. The defendant partly paid the taxed costs but the inquiry as to damages was not prosecuted. The plaintiff served on the defendant a bankruptcy notice for the unpaid balance of the costs, describing it in the notice as the amount of the balance due on a final judgment obtained by him against the defendant in the Chancery Division. It was held that the order for the payment of costs was "a final judgment" within the meaning of s. 4, (1) (g) of the Bankruptcy Act, 1883, and that the plaintiff was entitled to serve the defendant with a bankruptcy notice for the unpaid balance of costs. In *Ex. p. the Earl of Strathmore* (1888) 20 Q. B. D. 512, 514, where it was held an order obtained by a defendant in an action in the Chancery Division under Order 27; r. 1, that the action should be dismissed for want of prosecution, and the payment of costs by the plaintiff, was not a final judgment in respect of which the defendant was entitled to serve the plaintiff with a bankruptcy notice, Lord Esher, M. R., observed that he could not help thinking that the words "upon the merits" should have been omitted from the definition Lord Selborne gave of, the words "final judgment" in *Ex parte Moore*.

A judgment for the amount of costs due under an interlocutory order made in the King's Bench Division is a final judgment within the meaning of s. 4, (1) g. though beyond all question, upon the interlocutory order a bankruptcy notice could not issue (*ex parte McDermott* [1895] 1 Q. B. 611, 615). The Bankruptcy Court has power to do that which no other Court can, namely, when an application is made to it for a receiving order against the debtor, it can look behind the judgment, or, in other words, it can inquire whether there is a good debt upon which the judgment is founded (per Lopes, L. J., *ibid.* p. 615). An order for the payment of costs gives rise to "a good and substantial debt" for the amount of the costs, and the Bankruptcy Court will consider it "a good debt".

In *Scott v. Morley* (1887) 20 Q. B. D. 120, it was held that under s. 5 of the Debtors Act, 1869, there is no power to commit to prison a married woman for her default in paying a sum for which judgment has been recovered against her by virtue of s. 1, (2) of the Married Women's Property Act, 1882; because such a judgment is merely a proprietary not a personal one. In this case the Court of Appeal settled the form in which a judgment against a married woman ought to be. By this form the amount recovered in the judgment, together with the costs to be taxed, is limited to her separate property which is not subject to any restriction against anticipation; and execution can only issue against her to that extent. The effect of this form of judgment is expressly qualified as regards restraint against anticipation contained in any settlement of a woman's own property made by herself; as such a restraint (by s. 19 of the Married Woman's Property Act, 1882) has no validity against debts contracted by her before marriage. The object of the Married Woman's Property Act, 1882, was to facilitate the recovery of debts out of the separate property of married women, and not to enlarge the existing power of committal for debt. A bankruptcy notice under s. 4, (1) g. of the Bankruptcy Act, 1883, cannot be issued against a married woman against whom a creditor has recovered a judgment in the form settled by the Court of Appeal in *Scott v. Morley* (20 Q. B. D. 120), because a bankruptcy notice must follow the terms of the judgment in respect of which it is issued. A bankruptcy notice must be in a prescribed form (Bankruptcy Act, 1883, s. 4, (2); s. 168; Form No. 6 in the Appendix to the Bankruptcy Rules, 1886.) The notice can only be in this form and says "You must pay to the creditor the sum claimed by him as being the amount due on a final judgment obtained by him against you". But a

married woman is not bound personally to pay the judgment debt: it is only to be paid out of her separate property.

The principle that a bankruptcy notice cannot be issued upon a judgment obtained against a married woman in the form approved by the Court of Appeal in *Scott v. Morley* applies even after the death of the husband (*Ex parte Levene* [1894] 1 Q. B. 328). The legal effect of a judgment against a married woman in the name of the firm under which she is trading is that such a judgment merely binds her separate estate, and therefore a bankruptcy notice cannot be founded on a judgment obtained against her in a firm name under Order XLVIII a of the Rules of the Supreme Court. The proceeding by bankruptcy notice is substituted for the former proceeding by debtor's summons under the Bankruptcy Act, 1869, and in a bankruptcy proceeding, "although you may on filing the petition be allowed to use for convenience the collective name or the trade name as the name in which the proceeding shall be instituted, it is perfectly plain that in bankruptcy you must drop the use of that name, and take care that your proceedings are personally against the person whom you seek to make bankrupt. The result is ultimately that the adjudication is an adjudication against the individual": *In re Frances Handford and Co.*, [1899] 1 Q. B. 566, 570; *Per Vaughan-Williams, L. J.*

The word "creditor" at the commencement of part g of of s. 4 (1) of the Bankruptcy Act, 1883, means a creditor under the judgment, and not before the judgment, and therefore includes a person who has obtained judgment for a tort, and is not by any means to be confined to a creditor who has obtained judgment for a debt (*in re Faithfull* (1885) 14 Q. B. D. 627). In *Ex. p. Twisaday* (1890) 7 Morr. 222, the point raised in an action was whether one of two trustees was liable to indemnify the other, and the Court found that he was liable. This was a judgment, then came a final proceeding and by that last order the judgment previously given was ascertained in amount. Cave, J., considered that here were all the elements of a final judgment; there was a *litis contestatio* beyond all question, and a bankruptcy notice can be issued in respect of such a judgment.

As regards what constitutes the stay of execution mentioned in part g of section 4 (1) of the Bankruptcy Act, 1883, so that the judgment creditor cannot issue a bankruptcy notice, where goods taken in execution under a judgment are claimed by a third party, and an interpleader order is made, under which the sheriff withdraws from possession, execution on the judgment has been stayed, and therefore the judgment creditor cannot issue a bankruptcy notice. In such a case there is in substance a stay of execution until the issue in the interpleader is decided, and therefore, though the judgment creditor has obtained a final judgment, he is not in a position to issue execution. The sheriff in this case cannot return the first writ until the issue is decided, for until then he cannot know whether to make a return of *feri feci* or *nulla bona*. Again the concluding words of par. g. shew that the notice must require the debtor to pay the judgment debt in accordance with the terms of the judgment, but it is obvious the notice cannot comply with this provision while the interpleader issue remains undecided (*in re Ford* (1886) 18 Q. B. D. 369.) But a creditor is entitled to issue a bankruptcy notice under the above circumstances when an interpleader order has been obtained and the issue decided, and the whole amount of the judgment debt has not been levied, as the amount paid into Court by the claimant under the interpleader order has to be deducted.

Formal objections, amounting to little more than clerical errors, do not invalidate proceedings in bankruptcy, by s. 143 of the Bankruptcy Act, 1883 (*In re Bates, Ex parte Lindsey* (1887) 4 Morr. 197). There is nothing whatever in a technical objection that a bankruptcy notice which requires payment of an amount due on a final judgment does not allow for income-tax. *In re Cooper* [1911] 2 K. B. 550. When the bankruptcy notice is served on the same day as the interpleader summons is issued, which is adjourned generally in default of appearance of any of the parties, the creditor is not in a position to issue execution, and the receiving order must be set aside (*In re Phillips* (1888), 5 Morr. 40). Where goods taken in execution under a judgment have been claimed by a third party before the sheriff has made a return, and an interpleader summons has been taken out, and is pending, the judgment creditor is not in a position to issue execution for the amount of the judgment debt, and therefore is not entitled to serve a bankruptcy notice on the judgment debtor (*In re Follows* [1895] 2 Q. B. 521). A judgment creditor may, however, issue a bankruptcy notice in respect of a judg-

ment debt, when the sheriff has seized goods of a stranger by mistake for those of the judgment debtor, because there is then no stay, express or implied, and the sheriff has not realized anything by the seizure or the sale of the goods of the debtor, for which he is bound to account or make a deduction from the judgment debt mentioned in the bankruptcy notice; the sheriff, in such case, has never been in possession of the goods of the judgment debtor. Where the seizure has been of goods other than those of the judgment debtor there is nothing irregular or illegal in the issue of a second writ of *fiery facias* before a return has been made to the first (*Ex parte Smith* [1902] 2 K. B. 260). The case of *Miller v. Peel* (1815) 6 Taunt. 370 is a plain authority for the proposition that, if a judgment creditor does cause the sheriff to execute his *fiery facias* by seizure, he cannot have a writ of *capias* till the *fiery facias* is completely executed and returned, and that this is so even though the execution creditor abandons the seizure of the goods. But even when the sheriff seizes the goods of a stranger there may be an express stay of execution when the sheriff interpleads, arising by the interpleader order or an implied stay by the pendency of the summons. (Cf. the observations of Vaughan Williams, L. J., in delivering the judgment of the Court, *Ex parte Smith* [1902] 2 K. B. 260, 268). A judgment creditor who has obtained a final judgment is not entitled to serve a bankruptcy notice, when a judgment creditor of the former serves on his judgment debtor a garnishee order nisi, attaching the judgment debt due from him to the first creditor. The garnishee order absolute gives an exclusive right to levy execution upon the judgment to the garnishor and operates as a stay of execution so far as the garnishee is concerned (*Ex parte Hyde* (1888) 20 Q. B. D. 690). But if a proper bankruptcy notice is served before the garnishee order nisi has been made absolute, a receiving order founded on non-compliance with it will not be set aside, the reason being, that at the time of the service of the bankruptcy notice in this case there is nothing which can be suggested as a stay of execution, as, *ex hypothesi*, no garnishee order at all has been served on the judgment debtor at the time of the service of the bankruptcy notice. Non-compliance with the requirements of a bankruptcy notice after seven days constitutes an act of bankruptcy on the part of the debtor, unless he satisfies the court that he has a counterclaim. But there is an equity outside the words of the Act which will prevent a receiving order being made in certain cases, although they are within the words of the section (*Ex parte Greener* (1880), 15 Ch. D. 457; *Re Sedgwick* (1890), 60 L. T. 9). That equity, however, only goes to this extent, that, if a creditor by his conduct prevents the debtor from complying with the notice and paying the judgment debt, the debtor's non-compliance with the notice is not an act of bankruptcy. The equity applies if in the opinion of any reasonable man what the creditor has done, in fact, as a matter of business, has prevented the debtor from paying (*Re Dennis*, (1888) 60 L. T. 348). In one of the two cases cited a creditor was held not to have prevented the debtor from complying with the requirements of a bankruptcy notice when he merely attached the debtor's shares, and the legal effect of this would not have prevented the debtor's selling the shares, though it might have made it more difficult for him to do so. In another case, after the service of a debtor's summons, and before the expiration of the time limited for the payment of the debt, the summoning creditor presented a bankruptcy petition against the debtor, founded on the same debt, but alleging that he had made a fraudulent conveyance of his property or of some part thereof. The debt was not paid within the twenty-one days, and the creditor then presented a second petition founded on the alleged neglect of the debtor to pay the debt according to the requirements of the summons. It was held that the mere fact of the pendency of the first petition was not a sufficient reason for saying that the debtor had been prevented from paying the debt by the act of the petitioning creditor, and that, therefore, there was neglect to pay and an act of bankruptcy; and that to resist adjudication on the second petition the debtor must prove as a matter of fact that the pendency of the first petition had prevented him from paying the debt (*Ex parte Greener*, (1880) 15 Ch. D. 457).

A creditor who has obtained a final judgment against a debtor is not entitled to issue a bankruptcy notice for any larger amount than that for which he is entitled to execution. Therefore where a creditor has been paid part of his judgment debt, he cannot issue a bankruptcy notice for the whole debt, but only for the balance remaining due after deducting any payments which have been made. In a case where there had been part payment, Vaughan Williams, L. J., observed

that—"it would almost amount to an absurdity to say that the Act of Parliament could require the debtor to pay the whole of the debt although a portion of it had been satisfied by payment having been accepted" (*In re Child* [1892] 2 Q. B. 77. In *Ex p. Follows* [1895] 2 Q. B. 521, 524, Vaughan Williams, L. J., observed that, he relied "not on any right to a stay of execution, but on the plain intention of the Act of Parliament, that a bankruptcy notice shall only demand payment of that which the judgment creditor can enforce payment of. If the amount of the debt had been paid, the judgment creditor would have ceased to have a right to issue execution. . . . The question therefore is, can a bankruptcy notice issue for a sum of money for which execution cannot issue? I will not go through all the cases in which this question has been raised, but it is enough to say that it has been decided that it cannot." In *Ex parte Lindsey* (1887) 4 Morr. 192, it was held that a bankruptcy notice might issue though execution had been stayed as to a part of the judgment debt, a decision that appears to conflict with the above; but "the proper way to look at the judgment is to suppose the learned judge (Mathew; J.) thought that the bankruptcy notice could only be issued for the amount for which execution could have been issued—that is, for the balance due" (Par Vaughan Williams, J. in *In re Child, supra*, (p. 81). It may be added that in this case—where it was held that a bankruptcy notice could issue although execution had been stayed as to a small amount—the judgment was only stayed as to £20, and £426 remained unpaid. The objection was considered by the Court as a mere formal defect which it had power to remedy, and it also considered that no substantial injustice had been caused. A recent case has established that execution may be stayed so as to prevent a bankruptcy notice being served even though no formal stay has been made in chambers, where a debtor accepts a bill drawn by the creditor for the unpaid residue of bills of costs obtained under a compromise judgment, even though the creditor stipulates that the bill is merely to be considered as a means of giving the debtor time, and not as a settlement of the judgment. The creditor issued a bankruptcy notice, at an interval of six months, both in respect of the unpaid residue of the bills of costs in the compromise judgment, and in respect of the bill. It was held in the Court of Appeal that the effect of taking the bill, and the debtor's acceptance, operated as an agreement not to sue, and an agreement not to sue, not merely during the currency of the bill, but afterwards, notwithstanding dishonour, so long as the bill was outstanding in the hands of a third party. At the date at which the second bankruptcy notice was served the bill constituted an agreement in existence between the debtor and creditor that the debt should be suspended. The Court of Appeal set aside with costs both the receiving order and the bankruptcy notice (*In re a Debtor* [1907] 1 K. B. 344).

A judgment creditor in issuing a bankruptcy notice is entitled to include in such bankruptcy notice a claim for interest on the judgment debt. It is a mere matter of detail whether the two amounts appear separately in the notice. The creditor is entitled to have the amount of the interest added to the judgment debt so that the debtor may be informed by the notice that he cannot comply with the notice without paying the interest on the debt (*In re Lehmann* (1890), 7 Morr. 181. *In re Cooper* [1911] 2 K. B. 550). It is "a mere flourish of advocacy" for a debtor to seek to set aside a bankruptcy notice on the ground that the order issued on a judgment obtained by consent, on which the notice is founded, has not been filed, and to take this objection on behalf of other supposititious judgment creditors. As between the judgment creditor and the judgment debtor the non-filing of the order does not make the judgment void, though it is void against other creditors. Cf. *In re Russell* (1888), 5 Morr. 258; referring to the construction put upon section 27 of the Debtors Act, 1869, in *Gowan v. Wright* (1887), 18 Q. B. D. 201.

The Bankruptcy Act, 1883, should, "where it specifies acts of bankruptcy, receive a very careful and strict interpretation" (Per Romer, L. J. in *In re H. B.* [1903] 1 K. B. 94, 104), and this is the short ground of a decision in which it was held that a bankruptcy notice was bad because it required the debtor to pay a debt not in accordance with the terms of a judgment, but merely in accordance with the terms of a judgment as modified by an agreement. A creditor and his debtor agreed in writing that the debt should stand at a certain sum and that the debtor should consent to a judgment against him for that sum, but that the amount should be payable by instalments. Judgment was accordingly signed

for the whole sum, but without any reference to payment by instalments. The debtor failing to pay some of the instalments as they fell due, the creditor served him with a bankruptcy notice requiring payment, not of the whole judgment debt, the final instalment of which had not yet become due, but of the total amount of the instalments then in arrear, as being "the amount due on the judgment". The judgment said nothing about payment by instalments, and the notice was clearly bad because it was a notice to pay part of a judgment debt, leaving any balance that might be due to be subsequently claimed. The notice in this case was held bad because it in no way showed that it was for part of the debt, and the whole question turned upon the construction of a difficult and complicated agreement. But a bankruptcy notice issued for a smaller sum than the judgment may be a notice to pay "in accordance with the terms of the judgment" within the meaning of par. g of s. 4 (1) of the Bankruptcy Act, 1883, so long as the notice makes it clear that nothing more is claimed to be due on the judgment beyond the amount specified in the notice. Any creditor is entitled to take advantage of an act of bankruptcy and to found a petition on it, even when the bankruptcy notice is served by another creditor in respect of a final judgment obtained by the latter (*Ex parte Rock Red Brick Company* (1904) 90 L. T. 64), and even if the debtor has paid the debt.

On the authority of *Montgomery v. De Bulmes* [1898] 2 Q. B. 420, which was referred to as an authority of great force by Wright and Ridley, J. J., in *Ex p. Rock Red Brick Company, supra*, it has been decided that a creditor who has recovered a judgment against his debtor in the High Court, and afterwards obtains from a county court judge an order under section 5 of the Debtors Act, 1869, for payment of that debt by instalments, cannot afterwards levy execution on the judgment in the High Court, because he has thereby elected to have the judgment of the High Court modified to the extent of the order of the county court judge. In *Montgomery v. de Bulmes* the defendant loyally and faithfully obeyed the county court judge's order to pay by instalments, and Chitty, L. J., observed that in such a case a debtor would be likely to be misled, and it would involve great injustice, if he were told he was still liable, in spite of his having paid the instalments as they became due, to pay the whole debt, and that what goods he had could be taken in execution. Of all the proceedings known to the law, bankruptcy proceedings, Lord Esher, M. R., observed (*In re Law, Ex parte Gibson* (1895) 2 Manson 169, 170) ought to be less technical than any other. In bankruptcy all technicalities should be swept away, and a Bankruptcy Court may go further in disregarding technicalities than any other Court of law or equity. Consequently a bankruptcy notice was held valid, when it stated erroneously that judgment had been obtained against six persons instead of four, of whom the defendant was one. In other respects the bankruptcy notice was founded on the judgment. A notice is not to be treated as a bad notice when the debtor cannot be in any doubt as to the judgment being described in the notice. In another case, a bankruptcy notice was held invalid, and not in accordance with the terms of the judgment, when the creditors were described as trustees in the notice and not in the judgment. Such a notice is simply a trap for the debtor because it does not inform the debtor clearly who is the creditor whom he is required to pay. Bankruptcy proceedings involve quasi penal consequences to the debtor, and hence a bankruptcy notice does not follow the terms of the judgment for the purposes of bankruptcy law, even when it contains a merely immaterial addition which is not found in the judgment (*In re Howes* [1892] 2 Q. B. 628). When a final judgment has been issued against a firm, by Order XLII., r. 10, execution can immediately issue against the property of the firm, but cannot go against the private property of any member of the firm without the leave of the Court, unless that member has been actually served as a partner with the writ of summons, or unless he has appeared in his own name, or unless he has admitted on the pleadings that he is, or has been adjudged to be, a partner. Unless a member of a firm against whom a final judgment has been given is in one of the above categories, he is not a person against whom a bankruptcy notice can properly issue in respect of the judgment against the firm (*Ex parte Idé* (1886), 17 Q. B. D. 755). In an action against a firm of which it appears that one partner is an infant, for goods supplied to the firm, judgment cannot be recovered against the firm simply, but may be recovered against "the defendants other than" the infant partner; and if a receiving order has been made against the firm simply the

proceedings may be amended under the Bankruptcy Act, 1883, s. 105 (*Lovell v. Beauchamp* [1894] A. C. 607). When prior to the presentation of a petition by a firm, one of the partners files a liquidation petition and a receiver is appointed, the trustee ought to be made a co-petitioner, and the neglect to join him constitutes a mere irregularity which may be corrected at the hearing of the petition. In such a case, unless the trustee is joined, there may be a good act of bankruptcy, and a good bankruptcy notice, but a receiving order cannot properly be made (*Ex parte Owen* (1884) 13 Q. B. D. 113). Under the Bankruptcy Act, 1883, as under the Bankruptcy Act, 1869, a mere trustee of a debt for an absolute beneficial owner is not entitled to present a bankruptcy petition against the debtor unless the cestui que trust, if capable of dealing with the debt, joins as a co-petitioner. It has been said that this is not a mere rule of practice, it is a rule founded on principle. Otherwise it would suffice to have only the oath of a man (i. e. the bare trustee) to whom in fact not a farthing is due, and who may know nothing at all about the security which the real owner has got. If no notice at all is taken of the cestui que trust, it may well happen there is no real debt at all, though in legal parlance there may be a debt. When an act of bankruptcy has been committed by the failure of a debtor to comply with a bankruptcy notice, any creditor may avail himself of it for the purpose of presenting a bankruptcy petition against the debtor; the right to petition is not limited to the creditor who has served the bankruptcy notice. "A creditor" in s. 5 of the Bankruptcy Act, 1883, does not mean that creditor alone who has obtained the final judgment. There is no word in the Act, affirmative or negative, as to who is to be petitioning creditor (*In re Hastings* (1884) 14 Q. B. D. 184). The omission of the cestui que trust's name in a bankruptcy petition may be treated as a mere slip, which there is power to amend under s. 105 of the Bankruptcy Act.

A new bankruptcy notice may be issued in respect of the same debt, when a prior one has been issued and withdrawn, if the judgment still remains in force. An agreement to pay a judgment debt by monthly instalments implies that if the debtor does not pay in time the whole amount is to become due and to become due under the judgment; and that the judgment creditor is then entitled to issue a bankruptcy notice in respect of the debt (*In re Feast* (1883), 4 Morr. 37).

As to the form of a bankruptcy notice see Form 6 in Appendix of Forms to the principal Act, and Williams on Bankruptcy p. 488; and as to how and from what Court it is to issue, see Bankruptcy Rules, 136 and 137, and Williams on Bankruptcy, p. 488.

It is impossible, without doing violence to the language of the Act to hold that two final judgments can be joined together for the purposes of a bankruptcy notice, as the language of section 4 (1) g of the Bankruptcy Act, as it is written, in every part, shews that it applies only to one judgment (*In re Low* (1890), 7 Morr. 302). The joinder of two sums, even if one sum is not due in respect of a final judgment, is fatal to a bankruptcy notice (*In re Bassett* (1895), 2 Mans. 177). A bankruptcy petition must be presented within three months from the time of the committing of the act of bankruptcy (Bankruptcy Act, 1883, s. 6, (1) par. e., *In re Maud* (1891), 7 Morr. 144, 146) and the act is complete at the last moment of the day on which it was committed. The act of bankruptcy committed by a debtor by reason of his non-compliance with a bankruptcy notice duly served on him is complete at the last moment of the seven days allowed to him by the section to comply with the requirements of such notice. In construing the requisitions of a bankruptcy notice as settled by the Act and Rules, regard must be had to their substance and meaning, and not merely to the words, and it is monstrous to make a man bankrupt for the non-payment of a debt, when the address of the creditor given in the bankruptcy notice is not an address at which he will be found; and, therefore, is, equally, not an address at which the debtor can do the things he is required to do by the bankruptcy notice (*In re Stogdon, Ex parte Leigh* [1895] 2 Q. B. 534). A bankruptcy notice which directs payment either to the creditors or to their solicitor is not in any reasonable sense a notice requiring payment of the judgment debt in accordance with the judgment (*In re a Debtor* [1911] W. N. 135). An order refusing to set aside a bankruptcy notice is a final order within the meaning of Order LVIII of the Rules of the Supreme Court, 1883, and therefore notice of appeal from such refusal is, undoubtedly, a fourteen days' notice. Where such notice is not given, the Court will direct the case to stand over to a

certain day until the time has elapsed (*In re Phillips* (1888), 5 Morr. 187), and notice must then be given to the registrar and the creditor. If an appeal is out of time (no appeal in bankruptcy can be brought after the expiration of twenty-one days, by Rule 130 of the Bankruptcy Rules 1886), the party in default must be prepared with an affidavit, in which it seems sufficient to state that the appeal was delayed under an idea the affair would be settled, or by a mistake in drawing up the order (*In re Phillips, supra*).

On the hearing of a bankruptcy petition, the Court has power to go behind the judgment and enquire into the validity of the debt (*In re Lennox* (1885), 16 Q. B. D. 315), according to the words of section 7 (3) of the Bankruptcy Act, 1883. But those words have no application to the hearing of an application by the debtor to set aside the bankruptcy notice, and on such an occasion the Court cannot go behind the judgment. On the hearing of an application by the debtor to set aside the bankruptcy notice, the only reasons which can be entertained by the registrar are the reasons which are mentioned in section 4, (1) g, viz; — that the debtor has a counterclaim, set-off or cross-demand which he could not set up in the action in which judgment was obtained (*In re Easton* (1893), 10 Morr., p. 111). It is not possible to draw a hard and fast line between what is a substantial and what is a formal defect in a bankruptcy notice, which may be amended (*In re Bates* (1887), 4 Morr. 192, *In re Miller* (1893), 10 Morr. 183).

Notice by debtor of suspension of payment. The last act of bankruptcy set out in the Bankruptcy Act is that contained in par. h of ss. (1) of s. 4, which declares that a debtor commits an act of bankruptcy if he “gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts”. A notice by a debtor that he has suspended, or that he is about to suspend, payment of his debts need not, in order that it may constitute an act of bankruptcy, be in writing. It is sufficient if a verbal statement to that effect be made by the debtor to one of his creditors (*In re Walker* (1884) 13 Q. B. D. 469.) Cases decided immediately after the passing of the principal Act of 1883 are, however, not entirely in unison on the point that “mere casual talk” by the debtor amounts to an intimation that he has suspended or is about to suspend payment of his debts. It was thought that a certain formality was required, that something should be done by the debtor with a consciousness that he is giving notice of suspension of payment and intended by him in that sense, as “an act of bankruptcy is a serious matter” (Cf. the judgments in the Court of Appeal in *In re Friedlander* (1884) 13 Q. B. D. 471, 474).

Within less than a decade after the passing of the Bankruptcy Act, 1883, the uncertainty of construction that prevailed as to what constituted a notice of intention to suspend payment within the meaning of par. h of s. 4 (1), was dispelled by a decision in the House of Lords (*Crook v. Morley* [1891] A. C. 316). In this case a trader sent to his creditors the following circular—“Being unable to meet my engagements as they fall due, I invite your attendance at the Guildhall Tavern, Gresham Street, City, on Wednesday next at 3 p.m., when I will submit a statement of my position for your consideration and decision”. It was held by the House of Lords that this letter was an act of bankruptcy within the paragraph. The judgment of the Earl of Selborne dealt at some length with the general law, apart from the *evidentia rei* and the force and effect of the circular or letter in the case. In previous decisions it had been concluded that pars (f) and (h) were *in pari materia*, and that as it was necessary that a declaration of inability to pay debts under par. (f) had to be filed, it was equally necessary to file a notice of suspension of payment under par. (h). A contrary construction was held by Lord Coleridge and Cave, J., to render absolutely nugatory the requisition as to filing in par. (f). It was also considered that the suspension of payment referred to in par. (h) means that a man has ceased altogether to pay his debts, as when a bank has ceased payment the bank shutters are put up and they refuse to pay any more money over the counter. When a man makes a proposal to his creditors there must always be temporary suspension, as it would be highly improper for him then to pay certain of these creditors in full and not to pay others; and, therefore, if a debtor’s suspending payment referred to in par. (h) meant merely temporarily suspending payment, no person would be able to make a proposition to his creditors at all without committing an act of bankruptcy (*Re Fleming* (1889), 60 L. T. 154). These views were implicitly rather than directly, overruled by the House of Lords in *Re Crook*.

Lord Selborne considered very definitively that it would be doing violence to the words of par. (h) not to consider that they extended to any suspension of payments *de facto*. Even where a business might possibly be resumed, a stoppage of business is so serious a thing, that the Legislature may fairly be presumed to have treated it as an act of bankruptcy. The implication from the requisition as to filing a declaration of inability to pay debts in par. (f) was rejected as regards par. (h) by both Lord Selborne and Lord Watson. The act of bankruptcy defined in par. (f) confers a privilege on the debtor of taking the benefit of the Act, by filing a declaration of insolvency. The act of bankruptcy defined by par. (h) is one of which the creditors may take advantage.

The principles laid down in this case have been applied in many subsequent cases, and the case of *Re Fleming*, can now hardly be relied on as an authority. In *Crook v. Morley*, *supra* at p. 319, the Earl of Selborne rendered an implicit testimony to the weight of the judgment in Fleming's case, but concluded his own judgment by saying—"On the case of Fleming I will say no more than this, that there are some observations of the very learned judge who delivered the judgment in that case in which I cannot entirely concur; and if I must rest my judgment in that case upon dissent from those observations, I am prepared respectfully to do so." Thus it appears to imply the virtual adoption of Lord Justice Bowen's "true test" of a suspension of payment within par. (h), in *In re Lamb* (4 Morr., 25 at p. 28), a test which was approved by Lord Selborne in *In re Crook*, that a circular was held a notice of suspension of payment though nothing of the kind was expressly mentioned, and there was no stoppage of business. But the debtors made mention of "financial difficulties", spoke of the desirability of consulting with creditors as to their position, and proposed a meeting of their creditors after their books had been examined by a firm of chartered accountants. It must be supposed that the natural and proper effect of such statements appearing in a circular addressed to creditors, to employ the language of Lord Justice Bowen and the Earl of Selborne, is to produce on the mind of a creditor receiving the circular an impression that the debtor is about to suspend payment. In both the cases, Vaughan Williams, J., observed, any creditor receiving either circular would understand that the debtors were unable to meet their engagements (*Ex parte Ball* [1893] 1 Q. B. 436). After debtors have issued to their creditors a circular of the kind in *ex p. Ball*, "it would be a very dishonest thing for the debtors to have made payments". Therefore in that case, accountants who had received considerable sums from the debtors after the date of the act of bankruptcy, for having examined their affairs, and for having prepared a statement, were compelled to refund the sums to the trustee in bankruptcy. It is in the discretion of the trustee to adopt such services and pay for them, but "generally speaking, a trustee ought to decline to adopt the services of the solicitor or accountant with regard to these meetings which debtors, in the expectation of a probable bankruptcy, call of their creditors". A solicitor cannot *primâ facie* look to the trustee for payment of costs payable to him by accountants employed by debtors to examine their books, as *primâ facie* the employment of a solicitor for that purpose is quite unnecessary. The money of the bankrupt is potentially the money of the creditors, and a solicitor or accountant cannot look to it for payment of services to be rendered after an act of bankruptcy has been committed (*Ex p. Ball* [1893] 1 Q. B. and the observations of Williams, J., at page 436). But a solicitor cannot be compelled to pay over to the trustee money paid to him for services rendered for legal advice and assistance against a bankruptcy petition. It would be as absurd that a solicitor who does his work and is paid for his services in unsuccessfully resisting a bankruptcy petition, should refund such payments, as that the trustee should recover from the baker the price of a loaf bought by the bankrupt, with the former's knowledge of an act of bankruptcy (Cf. the observations of Cave, J., in *Ex parte Payne* (1885) 15 Q. B. D. 616, 618). Again the adoption of the true test, as given in *Crook v. Morley* and *in re Lamb*, how a circular would be understood by commercial men, explains a decision in which it was held that a trader's circular admitting he was in difficulties, and proposing a meeting of his creditors, was held a notice of his intention to suspend within s. 4, (1) h. If a respondent debtor, having been duly served with notice of the appeal from the refusal of a receiving order, does not appear, a receiving order may be made against him without further notice (*In re Selwood*, (1894) 1 Mans. 66). The following circular addressed to the creditors

of a married woman by her solicitors has been held a notice of intention to suspend payment—“Mrs. Dagnall has placed her affairs in our hands, and in pursuance of our advice we have received instructions to call a meeting of her creditors and lay her circumstances before them”. The letter concluded with assigning a date and place for the meeting of the creditors, and requesting a statement of account. In regard to this document Vaughan Williams, J., after observing that in his judgment this circular amounted to a notice of intention to suspend payment, continued—“It is true that it (the circular) did not in terms state that she would suspend payment; but it was such a statement that it would have been dishonest in her if between the date of its issue and the date of the holding of the meeting announced by it she had attempted to settle with any of her creditors separately . . . it must be read as announcing to the creditors that she would in the mean time suspend payment to individual creditors, and deal with them all collectively at the meeting.” (*In re Dagnall*, [1896] 2 Q. B. 407, 411).

A statement by a debtor that “he has been hammered on the Stock Exchange” that he is “in a dreadful way”, that he is “utterly penniless”, and a reply in answer to a request to refund to the effect that “he could not pay anybody”, and that “he had lost everything”, constitutes a notice of suspension, and, therefore an act of bankruptcy, according to a dictum of Lord Alverstone (*In re Miller*, [1901] 1 Q. B. 51, 57), but in that case there was not a good petitioning creditor’s debt on which to found a petition in bankruptcy. As to cases where it has been held that the language employed by the debtor did not amount to a notice of suspension of payment, and that, therefore, there was no act of bankruptcy within par. (h), see *Hill’s Trustee v. Rowlands* [1896] 2 Q. B. 124; *Re Phillips*, (1897) 76 L. T. 531; *Clough v. Samuel* (1905) 12 Mans. 347. The last named decision is of great importance on every ground, as the House of Lords was divided on the issue whether a statement by the debtor at a meeting of the principal creditors that he could not meet his engagements should be held not to be an act of bankruptcy, and the result of this decision, in the opinion of Lord Macnaghten, is to impair to some extent the authority of *Crook v. Morley*. The Earl of Halsbury, L. C., (with whom Lord Robertson concurred) observed (pp. 349, 350) that “if I look to the circumstances or the words used I concur with the Court of Appeal here that the debtor neither did nor intended to do anything to give notice to his creditors or to any of them that he intended to suspend the payment of his debts”. The Lord Chancellor, after reciting the facts, concluded that the debtor, though hopelessly insolvent, did nevertheless intend to continue business, though his expectation of being able to do so were probably vain, and that therefore the debtor had no intention of giving notice that he intended to suspend payment, either in express words or from anything he said from which an ordinary business man would infer that what he or his solicitor said on his behalf, or what he said himself, was a notice of intention to suspend payment of his debts”. On the general law, the Earl of Halsbury observed that the Bankruptcy Act, 1883, for the first time made it an act of bankruptcy for a debtor to give notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts. The term act of bankruptcy originally related to the days when bankruptcy was a crime. But by the statute, neither an admission of insolvency, nor an actual present state of insolvency, will be sufficient as an act of bankruptcy.

There are special provisions in the Bankruptcy Act as to traders, but the terms of s. 4, (1) (h) are general, so we are not at liberty to confine its operation to traders (Per Kennedy, J. in *In re Scott*, [1896] 1 Q. B. 619, 625). A new point was raised in *In re Scott*, which had to be dealt with without the assistance of authority. The question was whether a conversation of the debtor with a creditor could amount to a notice of suspension when the debtor was not a trader, and no circular was sent out. The debtor’s statement was in reality—“I cannot pay you or any one else; I have taken advice, and I am advised that I must deal with my creditors collectively. It was held in the Court of Appeal that this virtual announcement did amount to a notice of suspension of payment, or of intention to suspend payment, within the meaning of s. 4, (1) (h). In this case Vaughan Williams, J., observed (p. 624)—“I am convinced that s. 4, (1) (h) is meant to apply to the case of a debtor dealing with his creditors as a body. If a debtor gives notice to one of his creditors that he cannot pay, and that he will deal with all his creditors as a body, that will amount to a notice of suspension of payment; but the notice will not come within the section unless the debtor is dealing with all his creditors as a body.”

Another case on evidence as to what constitutes an act of bankruptcy by giving notice as to suspension of payment is the following. A debtor's solicitor, writing on his behalf to a judgment creditor proposing terms of compromise, added, "We think it well to repeat what we stated to you at our interview, that a receiving order will be applied for immediately execution is issued. It was held that this was not a notice of intention to suspend payment. In this case Vaughan Williams, J. observed that if the recipient of the letter would understand it to mean—"I am unable to pay my debts, and if you don't accept my offer or the suggestion made in this letter, I shall have no other alternative but to suspend payment—it would have constituted an act of bankruptcy, but having regard to all the circumstances in the knowledge of the writer of the letter and of the recipient of the letter, this assumption was improbable. On the facts of the case, Vaughan Williams, L. J., observed, the letter merely amounted to the debtor making an offer, leaving plenty of room for counter offers and discussion. The debtor had an estate which would be sacrificed if he committed an act of bankruptcy, and therefore issuing execution would be an ill-judged proceeding in the interests of the creditors (*Hill's Trustee v. Rowlands* (1896) 3 Mans. 136).

Notice of an act of bankruptcy cannot be given "without prejudice", because it is a document which, in its nature, may prejudice the person to whom it is addressed, though in some other way it may fulfil the conditions to which the rule of exclusion applies (*Ex p. Holt* [1893] 2 Q. B. 116).

A petitioning creditor is held to have estopped himself, when he has acquiesced in a deed of assignment by the debtor, from relying on the execution of such deed as an act of bankruptcy, and also from relying on the circular convening the meeting at which the composition was voted, as a notice of suspension constituting another act of bankruptcy (*In re Hawley*, (1897) 4 Mans. 41). A creditor may, without executing or expressly assenting to a deed of assignment by his debtor, nevertheless so acquiesce in it tacitly by conduct, e. g., supplying goods to the trustee of the deed, as to estop himself from setting up the assignment as an act of bankruptcy. If a circular convening the meeting to consider a proposed deed of assignment is part and parcel of the scheme, the creditor so estopped cannot rely upon it as a notice of suspension constituting an act of bankruptcy (*In re Woodroff*, (1897) 4 Mans. 46).

It is not good notice of an act of bankruptcy arising in a debtor informing his creditors that he has suspended payment, for the debtor's solicitor, in answer to inquiry by a creditor, to inform the latter that he is acting in a general way for the debtor, and that a circular convening a meeting of his creditors for the following Tuesday is in the printer's hands, and will be issued by his (i. e. the solicitor's) firm that same evening. A debtor may give his solicitor authority to give oral notice of suspension of payment, but unless such authority is expressly conferred, it will not be presumed. An authority to issue a circular announcing suspension of payment is revocable at any time before its issue. A solicitor who has the debtor's authority to send out circulars on a date which has not yet arrived, has no authority to give notice of an act of bankruptcy. Knowledge of a fact is not the same thing as either the giving or receiving notice of the fact (*In re Morgan*, (1895) 2 Mans. 508).

Part VI. Petition—Receiving Order.

Who may petition. In *ex parte Dearle*; *In re Hastings* (1884) 14 Q. B. D. 184, 190; Brett, M. R. observed—"In order to maintain a bankruptcy petition under the present Bankruptcy Act, there must be a good petitioning creditor's debt, a good act of bankruptcy, and the proper petitioning creditor". The two first conditions to the Court making a receiving order for the protection of the estate having been noticed, it remains to determine who is a proper petitioning creditor. It is an old rule in bankruptcy that the mere legal owner of a debt cannot obtain an adjudication without joining his *cestui que trust* with him. If there is a legal debt and the person coming before the Court in respect of it is not the beneficial owner, there must be brought before the Court also the beneficial owner, if he is a person capable of dealing with the debt, except where the person beneficially interested is under disability (*In re Adams* (1878) 9 Ch. D. 307.) Though only the judgment creditor who has obtained the final judgment is entitled to serve the notice which is to create the act of bankruptcy, the bankruptcy petition founded on the failure of a debtor to comply with a bankruptcy notice may be presented by another creditor who did

not serve the notice. As soon as there is a valid act of bankruptcy, any creditor who has a good petitioning creditor's debt can present a petition founded on that act of bankruptcy. The Bankruptcy Act, 1883, does not create a new petitioning creditor, though it created a new act of bankruptcy and a new petitioning creditor's debt (*In re Hastings* (1884) 14 Q. B. D. 184).

By section 6 (1) of the Bankruptcy Act, 1883, the conditions precedent to the presentation of a bankruptcy petition by a proper petitioning creditor are laid down as follows:

1. The debt must be over £50.
2. The debt must be a liquidated sum.
3. The act of bankruptcy must have occurred within three months previously.
4. The debtor must be domiciled in England or must have ordinarily resided there within a year of the date of the presentation of the petition.

By what may be called the Common Law of Bankruptcy, there must be a debt due to the petitioning creditor when the act of bankruptcy is committed on which it is intended to found the petition (*Moss v. Smith* (1808) 1 Camp. 489). In 1806, an act was passed under the influence and at the instance of Sir Samuel Romilly (46 G. III. c. 135), the object of which (inter alia) was to protect commissions (which formerly served the object of adjudications in bankruptcy) which had been regularly sued out, from being defeated by an act of bankruptcy committed prior to the contracting of the petitioning creditor's debt, but this enactment did not affect the principle of the above decision, which was that there must be a legally subsisting petitioning creditor's debt at the time of committing the act of bankruptcy upon which the commission issued. It is not necessary that the debt of the petitioning creditor should be presently payable at the date of the act of bankruptcy. A note given before an act of bankruptcy though indorsed after, is a debt upon which the indorsee might take out a commission of bankruptcy against the drawer (*Ex parte Thomas* (1747) 1 Atk. 73). A promissory note of the bankrupt due at the time of the act of bankruptcy was indorsed to the petitioning creditor before he petitioned and this was held sufficient on which to found the commission, or as would now be said, the adjudication (*Glaister v. Hewer* (1798) 7 T. R. 498). There is no authority for introducing relation so as to make a debt due on a bill of exchange which is incomplete because no drawer's name is affixed at the time of the act of bankruptcy, a good petitioning creditor's debt, by the drawer's name being subsequently written on it. There is no debt on a bill of exchange till it is issued for value (*Downes v. Richardson* (1822) 5 B. & A. 674). In a work of great authority, it is said that "generally any person entitled to take proceedings at law or in equity for the recovery of a debt may be a petitioning creditor subject to the same rules as to joinder of parties as would prevail in proceedings at law or in equity" (Williams on Bankruptcy, p. 36).

But a bankruptcy petition will be dismissed, though not on the bankrupt's own affidavit, where the Court is satisfied upon all the circumstances of the case that there is no reasonable possibility of any assets, now or in the future (*Ex parte Betts* [1897] 1 Q. B. 50) or where bankruptcy proceedings have been used, or have even been merely attempted to be employed, though the attempt may fail, for the purposes of fraud or extortion (*Ex p. Gill* (1901) 83 L. T. 754; *Re Otway* (1895) 72 L. T. 452; and cases collected in notes in Baldwin on Bankruptcy; p. 83).

It has been held in a number of cases that there are certain well marked exceptions to the general principle that any person entitled to take proceedings at law or in equity for the recovery of a debt may be a petitioning creditor. It has, for instance, been held that the following persons may not present a petition in bankruptcy:

1. A purser in a coast-book mining company, who, by the Stannaries Act (32 & 33 Vict. c. 19) is enabled to sue shareholders in his own name as nominal plaintiff for unpaid calls, may not petition in bankruptcy in his own name on behalf of the company in respect of a judgment recovered in such an action (*Ex parte Ashmead, re Nance* [1893] 1 Q. B. 590; *Guthrie v. Fisk* (1824) 3 B. & C. 178).
2. In a work of great authority on the law of bankruptcy it is considered that probably an undischarged bankrupt cannot present a petition in bankruptcy without the consent of his trustee, as he could not present a petition before the Bankruptcy Act, 1883, without the consent of his assignees (Williams

on Bankruptcy, p. 38). But it is a proposition upon which all the members of the Court of Appeal were agreed, that "until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bonâ fide* and for value, in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee. . . . The stress of *bona fides* is laid entirely and solely on the person dealing with the bankrupt; and if he has dealt in good faith, the question of whether the bankrupt, as between himself and the creditors, is also dealing in good faith is immaterial." (*Cohen v. Mitchell* (1890) 25 Q. B. D. 262, 267).

3. A bare trustee of a debt, even though he be the legal owner, cannot petition alone, unless the cestui que trust be a person under disability (*Ex parte Dearle, re Hastings* (1885) 14 Q. B. D. 184; *Ex parte Culley, re Adams* (1878) 9 Ch. D. 307).
4. A garnishee order does not create, as between garnishor and garnishee, any debt either at law or in equity; therefore, a person who has merely obtained a garnishee order is not entitled to file a petition against the garnishee debtor (*Re Combined Weighing Co.* (1890), 43 Ch. D. 59; *Pritchell v. English and Colonial Syndicate* [1899] 2 Q. B. 428).
5. A receiver appointed in an action in the Chancery Division may not present a petition in bankruptcy in respect of a sum ordered to be paid to him in that character (*Re Sacker* (1889) 22 Q. B. D. 179).
6. A surety who has only paid his own proportion of the principal debt cannot present a petition against his co-surety for contribution (*Ex parte Snowden* (1881) 17 Ch. D. 44).

The following is a summary of the decisions as to who may present a bankruptcy petition, though it cannot be supposed to be entirely exhaustive.

1. An executor may petition, though he must obtain probate before the receiving order (*Re Masonic Life Assurance Co.* (1886) 32 Ch. D. 373). If a petitioning creditor dies before the receiving order, his executor should carry on the proceedings, *Ex p. Winwood*, 1 Gl. & J. 252; *Ex p. Tanner*, M. & M. 292. One executor may petition without joining his co-executors, *Ex p. Brown*, 1 D. & Ch. 118.
2. A factor who has sold goods in his own name may present a petition in bankruptcy (*Sadler v. Leigh* (1816) 4 Camp. 195).
3. By section 148 of the Bankruptcy Act, 1883, a corporation may petition by any of its officers authorized in that behalf under the seal of the corporation (Cf. *Re Tomkins* [1901] 1 K. B. 476).
4. A company (not being a company incorporated under the Companies Act), or co-partnership, duly authorized to sue and be sued in the name of a public officer or agent, may present a bankruptcy petition against a debtor by such public officer or agent, who may act as a nominal petitioner. An additional affidavit must be filed in this case by the nominal petitioner, stating that he is a public officer or agent, and that he is authorized to present the petition. General Rules 258.
5. In the case of a limited company incorporated under the Companies Act the better way is for the secretary or officer to present the bankruptcy petition in his own name, stating that he is such officer, and is duly authorized under seal; but a petition may be presented by the company, and signed by the officer on its behalf (Cf. *Williams on Bankruptcy*, p. 369; *Re Whitley* (1891), 8 Morr. 149; *Re Collier*, (1891), 8 Morr. 80).
6. A bare trustee of a debt, even when he is a legal owner, cannot present a bankruptcy petition without joining the cestui que trust, but can do so if he is also beneficial owner of an amount sufficient to support a petition, i. e. not less than fifty pounds (*Ex parte Ward, re Gamgee* (1891), 8 Morr. 182).
7. Two survivors out of three joint creditors can rightly present a bankruptcy petition, without joining the personal representative of the deceased (*Ex p. Tucker* (1895), 2 Mans. 358).
8. One of two joint creditors may present a bankruptcy petition on behalf of himself and the other (*Ex p. Hobbs* (1892), 66 L. T. 144).
9. By section 110 of the Bankruptcy Act, 1883, any creditor whose debt is sufficient to entitle him to present a bankruptcy petition (i. e. over £50)

against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

10. By section 115 of the Bankruptcy Act, 1883, it is provided—"Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the partners who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct. The effect of this provision (*inter alia*) appears to be that two or more persons, being partners, or any person carrying on business under a partnership name, may present a bankruptcy petition (Cf. Baldwin on Bankruptcy; p. 82).
11. It appears to be the effect of the joint application of s. 148 of the Bankruptcy Act, 1883, and of the General Rules, 271 A, that a person appointed by the Court to represent a lunatic not so found by inquisition may present a bankruptcy petition in the name of the latter.
12. The purchaser of a good creditor's debt may present a bankruptcy petition (*Ex p. Baker* (1888), 5 Morr. 5).
13. The motive with which a bankruptcy petition is presented is immaterial. The normal motive may be supposed to be that of securing the equal distribution of a debtor's assets, but a petition will not be dismissed because it is presented with the motive of excluding the debtor from a partnership.
14. A secured creditor merely possesses a conditional right of presenting a bankruptcy petition; he can only do so if he complies with either of two alternative conditions precedent, i. e. he must state in his petition either, 1. that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt; or 2. what is the estimated value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, in the same manner as if he were an unsecured creditor (Bankruptcy Act, 1883; s. 6, (2)). By the interpretation section of the Bankruptcy Act, 1883, a secured creditor means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor.

What is a good petitioning creditor's debt. The Bankruptcy Act, 1883, s. 6, (1) par. b provides that in order that the petitioning creditor's debt should be a good debt for the purpose of founding a bankruptcy petition on it, it must be "a liquidated sum, payable either immediately or at some future time". The Act in this respect is merely declaratory of an old principle of bankruptcy law, which was considered by Lord Ellenborough in 1811 to have been settled ever since the year 1785, by a decision delivered in that year; but it also appears that virtually it never was questioned. In the decision alluded to, *In re Charles* (1811) 14 East, 196, the issue was whether a sum of £100 awarded by a jury in an action for breach of promise of marriage against a trader defendant, who had committed an act of bankruptcy between verdict and judgment, was a good petitioning creditor's debt. Lord Ellenborough pronounced the case to be of great importance and stated it required much deliberation. The Court then issued a certificate to the effect that the above mentioned debt was not a sufficient debt in law to support the commission. In another case it was held impossible to turn a covenant to pay the difference between the debts due from an old partnership stated in a schedule and any further debts into a covenant to pay a liquidated sum. Anything that could be recovered under such a covenant must be in the shape of damages, and such damages are not of a character to amount to a good petitioning creditor's debt (*Ex parte Broadhurst* (1852) 22 L. J. Bky. 21). A penalty due on a bond is not a good petitioning creditor's debt (*Johnson v. Diamond* (1855) 24 L. J. Ex. 217). A payment, though of a definite sum, due on a contingency does not properly create a debt for a liquidated sum payable at a certain future time (*In re Miller* [1901] 1 Q. B. 57). The amount of the differences due by a defaulter on the London Stock Exchange, as fixed by the official assignee of that body under its rules, though the rule really alters the original contract between the defaulter and his creditor, is an amount ascertained for the purposes of the contract, as the Stock

Exchange rule has to be imported into the contract, and therefore it is a good petitioning creditor's debt (*Ex parte Ward* (1882) 22 C. D. 132).

The Bankruptcy Act of 1869 altered the settled bankruptcy practice by making an equitable debt a good petitioning creditor's debt; but the Act of 1883 is silent as to the point. It may however be concluded in the affirmative that an equitable debt is nevertheless a good petitioning creditor's debt. A sum payable under a decree in Chancery was a good petitioning creditor's debt under the Act of 1869, and would appear so still, as the Judicature Acts have rendered any sum ordered to be paid, whether in the Chancery or King's Bench Division, payable under a judgment of the High Court of Justice (see R. S. C. 1883, Ord. XLII., r. 24).

The petitioning creditor's debt must be a liquidated sum, but there is authority for considering that a certain aliquot share in an ascertained sum claimed under a pending proceeding would be regarded as a good petitioning creditor's debt, because the proceeding in Chancery would not be necessary for the liquidation of the debt (Williams on Bankruptcy; p. 42).

Before 1731, a debt payable "at some certain future time" was not a good petitioning creditor's debt, but in that year this prohibition was removed as regards moneys payable at a future day under bonds, bills, notes, or personal security, and in 1825 the restriction was entirely removed. But the debt must be payable "at some certain future time", or it will not be a good petitioning creditor's debt, and therefore a debt due on a contingency, ex. gr. that a person should not become a member of the Stock Exchange by a certain date, or that recommenders should withhold their consent from a person becoming a member of the Stock Exchange, does not constitute a good petitioning creditor's debt (Per Lord Alverstone, L. C. J. in *In re Miller* [1900] 1 Q. B. 51, 57). In *Ex parte Wolfe* [1896] 1 Q. B. 616, the question was whether a letter signed by the creditor and debtor, giving an apparently indefinite right to renewal of a bill of exchange, provided the sum of £15 was paid from time to time as interest, prevented the debt from being a liquidated sum, payable "at some certain future time", and it was held by Vaughan Williams, J., that the debt was sufficient to support the petition. But a rebate of interest was allowed in this case, the creditor charging 60 p. c., while under the Bankruptcy Act, 1890, s. 23, a creditor is only allowed to receive a higher rate of interest than five per cent. after all the debts proved in the estate have been paid in full. The taking of a bill of exchange only gives an extended credit, which is determined by an act of bankruptcy on the part of the person who accepts the bill, because the act of bankruptcy puts it in the power of the other creditors to force on or dishonour the bill (*In re Raatz* [1897] 2 Q. B. 80). A bill of exchange is generally only a conditional payment, and if it is in the drawer's hands when it becomes due and is dishonoured the debt revives. But even after dishonour and when overdue, the rights of the drawer remain suspended, if the creditor has availed himself of the character of the bill as a negotiable instrument, and has passed it out of his possession so that the right to proceed on the bill is not vested in the drawer at the date of dishonour. "A moment's consideration will shew that the Courts would not be administering justice if they did not hold this to be the case", as otherwise the debtor could be made to pay the amount due on the bill of exchange twice over, and the creditor who drew the bill, after having received consideration for it from a *bonâ fide* holder for value, could also proceed against the acceptor either in bankruptcy or otherwise (*In re A Debtor* [1908] 1 K. B. 344, 350).

By par. c. of of section 6 (1) of the Bankruptcy Act, 1883, it is provided that the act of bankruptcy on which the petition is grounded must occur within three months before the presentation of the petition. In a case under this provision it was held that in calculating the three months, the day on which the petition is filed must be excluded (*In re Hanson* (1887) 4 Morr. 98).

By section 6 (2) it is provided that—"If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor". The tendency of the Bankruptcy Acts has been

to render the right of a secured creditor to petition moreconditional. *In ex parte Mexican Santa Barbara Mining Company* (1890) 19 Q. B. D. 613, a receiving order was granted in the following circumstances. A limited company presented a bankruptcy petition against the debtor, and it was founded upon a judgment debt. In their petition the company stated that they held no security for their debt upon the debtor's estate, although he was the cestui que trust of certain shares in the company which stood in the name of one Dickey, and that, as between himself and Dickey, the debtor had a right to a transfer of those shares. By the articles of association of the company, the company was entitled to a lien upon shares in respect of a debt due to them from the shareholder, and the amount of the shares exceeded the debt due from the debtor to the company. It was held that the company was not a secured creditor, as it could only look to the man whose name was upon the register. The policy of the Companies Act is to free companies from any obligation to take notice of trusts, and therefore even though the company had a lien under the above circumstances, it was only a lien against the debtor's trustee.

There cannot be any more formal defect than for a petitioning creditor to omit to state in his petition the value of his security, and therefore such a petition may be amended at the trial (*Ex parte Vanderlinden* (1882) 20 Ch. D. 289). But if the petition is not amended, the adjudication founded on the secured debt is bad, when the petitioning creditor neither estimates nor states his willingness to give up his security (*Moor v. Anglo-Italian Bank* (1879) 10 Ch. D. 681), but there is a conflict of decisions on the subject, as in the case just before mentioned, where the petitioning creditor omitted to state the value of his security, the Court of Appeal made an order of adjudication, though it did not give the petitioner (who appealed) the costs of his appeal. The petitioning creditor makes the estimate at his own risk, and is so far bound by it, that he cannot take any benefit in the administration in bankruptcy except on the basis of that estimate. It would be most unjust without evidence of mistake to allow a petitioning creditor to depart from his estimate of the value of his security and to prove on a different footing. (*In re Button*, [1905] 1 K. B. 602). But section 6 does not require that the petitioning creditor's estimate of the value of his security should be the true value, but it must be *bonâ fide* (*Ex parte Taylor* (1884) 13 Q. B. D. 128); when the Court has arrived at the conclusion that the estimate is real and not a sham, it ought not to go into the question what is the true value after the declaration of the estimated value (*In re Button* [1905] 1 K. B. 602). When a secured creditor presents a bankruptcy petition against his debtor and adjudication follows, there is nothing in the Bankruptcy Act, 1883, or the rules thereunder, that entitles the trustee in bankruptcy to redeem the petitioning creditor's security at the value he places on it in his petition, though he may do so at the assessed value in the secured creditor's proof (*Ex parte Saffery* [1899] 2 Q. B. 549). The general rule which governs the administration of property in bankruptcy is that the property of the bankrupt must be administered in such a manner as that, on the one hand, no particular creditor shall be benefited, and, on the other, that he shall not be prejudiced. Therefore, in a case in which questions arose that had not arisen before, where one of the prior mortgagees of a bankrupt mortgagor sought to prove for her mortgage debt in bankruptcy, it was held that the trustee stood in the place of the prior mortgagee, and that the rights of the subsequent mortgagees were not accelerated or advanced, but that the whole matter remained as it was, and there was no annihilation of the security of the prior mortgagee (*Cracknell v. Jackson* (1877) 6 Ch. D. 735).

Proceedings and order on Creditor's Petition. The following is a summary of the provisions of section 7 of the Bankruptcy Act, 1883 on the subject of proceedings and order on a creditor's petition. The Court will dismiss the petition (which must be duly verified by the creditor's affidavit and duly served) if dissatisfied with the proof of the debt, the act of bankruptcy, or of the service of the notice. The petition will also be dismissed on the ground of an appeal pending from the judgment when the Court makes a receiving order on the petition of another creditor. Where the debt is contested, proceedings on the petition may be stayed till the trial of the question. A creditor's petition can only be withdrawn with leave of the Court.

A bankruptcy petition may be either the petition of a creditor or a debtor. The obligatory requisites are the following;—A bankruptcy petition must:

1. Be founded on some act of bankruptcy, unless it is the case of a debtor's petition, which will, in itself, be deemed an act of bankruptcy.
2. Be presented to and filed in the Court within the district of which the debtor carried on business (General Rules, No. 145). *Primâ facie*, a petition is presented when it is filed (*Ex p. Ross, re Gripps* (1889), 58 L. J. Q. B. 19). The filing is valid, though after office hours (*Ex parte Jones, re Williams* (1880), 42 L. T. 157).
3. Be verified by affidavit (Bankruptcy Act, 1883, s. 7 par. 1. General rules rr. 149—152. Forms 12, 13. Attestation of petition, r. 146. The affidavit is not proof, at all events when the statements in it are contested by the debtor (*Ex parte Sanders* (1894), 63 L. J. Q. B. 734; *Ex p. Raatz* [1897] 2 Q. B. 80). Deposit on petition rr. 125, 147. The costs of a petitioner are taxed costs and entitled to priority to the trustee's solicitor's bill of costs not actually incurred in the realization of the assets, (*Ex p. Wingfield* [1903] 1 KB. 7. 35). There must also be verification by affidavit by some person on behalf of the creditor having knowledge of the facts when the petition is presented, by a person on the creditor's behalf, ex gr. a partner (s. 115), the officer of a corporation (s. 148).
4. Must allege some act of bankruptcy which has occurred within three months before the presentation of the petition. (There is a power of amending the petition when the act of bankruptcy is based on a wrong section; *Ex p. Barton, re Philipps* [1900] 2 Q. B. 329).
5. Must state the date of the service of the bankruptcy notice and of non-compliance therewith, if the act of bankruptcy relied on in the petition is failure to comply with a bankruptcy notice (*Ex p. Dunhill* [1894] 2 Q. B. 234).
6. Must shew that the debt was due to the petitioning creditor at the date of its presentation (*Ex p. Raatz*, [1897] 2. Q. B. 80).
7. Must contain both the past as well as present description and address of the debtor when the debtor has changed his address since he contracted the petitioning creditor's debt (General Rules, 144).
8. Must contain both the real and assumed names of the debtor, when he carries on a trade in an assumed name (*Ex p. Myles* (1891), 8 Morrell, 255).
9. Must be signed by a person acting under a sufficient power of attorney when it is verified by the affidavit of some one acting on behalf of the creditor (*Ex p. Wallace* (1885), 14 Q. B. D. 22).
10. Must not be amended after adjudication, when originally defective (*Ex p. Coates* (1877), 5 Ch. D. 979) nor after the lapse of three months from the date of the act of bankruptcy alleged, by the addition of an entirely new petitioner (*Ex parte Maund* [1895] 1 Q. B. 194). But a bankruptcy petition may be amended even after the lapse of three months from the date of the act of bankruptcy, where the party added is merely a cestui que trust (*Ex p. Dearle, re Hastings* (1885) 14 Q. B. D. 184), or the addition is only required by bankruptcy practice (*Ex p. Blain, re Dean* (1902) 18 I. L. R. 606).
11. Must be attested, if the petition is presented by two creditors, but if insufficiently attested as to one may be amended, notwithstanding the lapse of three months since the act of bankruptcy on which the petition is founded.
12. Must be served on the debtor personally, by means of a sealed copy of the filed petition, either by an officer of the Court, or by the creditor or his solicitor, or by some person in their employ (Bankruptcy Act, 1883, s. 7, par. 1), before the hour of six in the afternoon, except on Saturdays, when it must be served before the hour of two. If service of the petition is effected later on either occasion, it is presumed to have been effected the next day (General Rules, No. 90).
13. Must be endorsed by the solicitor with his name or firm and place of business, which is called his address for service, except in the case of proceedings in the High Court, when a solicitor whose address for service is not within three miles of the principal entrance of the Royal Courts of Justice must add to his own name or firm and place of business another proper place situate within the distance (General Rules, 89).

14. Must be indorsed with the date and place of hearing by the registrar. There may be substituted service effected by delivery of the petition to some adult inmate at the debtor's usual or last known residence or place of business, or by registered letter, in cases where the Court is satisfied by affidavit, or other evidence on oath, that the debtor is keeping out of the way to avoid service, as where he has gone abroad (General Rules, 154, Forms 16, 16 [a].) Where a debtor against whom a bankruptcy petition has been filed dies before service thereof, the Court may order service to be effected on the personal representatives of the debtor, or on such other persons as the Court may think fit (General Rules 156 A). Such service cannot be effected on a foreigner domiciled and resident abroad, even though he is a member of a firm carrying on business here (*Ex parte Blain, re Sauers* (1879), 12 Ch. D. 522).

Evidence in support of Petition. On the hearing of a bankruptcy petition the petitioning creditor is entitled to the production of the debtor's books for the purpose of proving the allegations in the petition. The Court of Appeal have also expressed their opinion that on the hearing of a bankruptcy petition the petitioning creditor is entitled to call the debtor himself as a witness in support of the petition, on the ground that, now that a debtor can petition for an adjudication of bankruptcy against himself, bankruptcy proceedings can no longer be considered as of a quasi-criminal nature (*In re X. Y. Ex p. Haes* [1901] 1 K. B. 98).

Whether a creditor's petition may be withdrawn when a debtor makes a strictly legal tender. It is noticeable that by section 7 (7) of the Bankruptcy Act, 1883, it is provided that "a creditor's petition shall not, after presentment, be withdrawn without the leave of the Court". A moot point arises whether this prohibits a petitioning creditor, after presentment of the petition, from receiving payment so as to prevent further proceedings being taken on the petition. Assuming this to be the effect of the above provision in the principal Act, it would imply a distinct reversion to the view that proceedings in bankruptcy are of a quasi criminal nature. But even under the Act of 1869, under which it was held that the Court might, if it thought fit, make an order discharging the receiver so as to enable the petitioning creditor to settle with the bankrupt (*Ex p. Jay* (1874) L. R. 9 Ch. 133; *Ex p. Boss* (1874) L. R. 18 Eq. 375), it appears, according to the dicta of the Court of Appeal in *In re Brigstocke* (1877) 4 Ch. D. 348, 351, that it was not absolutely obligatory on the Registrar to make the order for adjudication when the statutory requisites have been proved, but the debtor is willing and ready to pay the petitioning creditor's debt and costs. In this case James, L. J., observed that he thought it very hard that a man should be made bankrupt in a supposititious case where there is a *bona fide* dispute about a debt, and the debtor chooses to fight the question out before the Registrar, instead of in an action; and then the Registrar hears both sides and comes to the conclusion that the debtor owes, say £ 100, and the debtor then submits to the decision and offers to pay the debt and costs. Amphlett, L. J., considered that other cases might be conceived to exist, beyond that hypothetically advanced by James, L. J., in which the Registrar or Judge might exercise a discretion to refuse to adjudicate a debtor a bankrupt, when a tender was made of the petitioning creditor's debt and costs. Bramwell, L. J., on the other hand, considered that the utmost that could be said was that the Registrar had power under certain circumstances to refuse an adjudication when a tender was made. But where an act of bankruptcy was committed upon a small debt and the debtor twice endeavoured to defeat bankruptcy proceedings by tendering full payment to one of several creditors who joined in petitioning, it was held that at any rate it is the right of the creditor and semble it may be his duty, to refuse the debtor's offer to pay his debt (*In re Loue*, (1890) 7 Morr. 25). In a case where a creditor issued a summons to his debtor, and the debtor attended and admitted part of the debt and tendered the part he admitted, it was held that there was a good and valid legal tender of the whole money admitted, and that no act of bankruptcy had been committed (*Ex parte Danks, In re Farley* (1853) 22 L. J. Bky. 73.) The inference deduced from this case, in an authoritative work, is that a legal tender of the amount due under the notice within the seven days will prevent the commission of an act of bankruptcy (Williams on Bankruptcy, p. 30). The Court in this case was divided on the point whether a strictly legal tender is necessary in bankruptcy proceedings, so that the creditor may test it by at once demanding

sight of the money. On the one hand Lord Justice Knight Bruce thought that it would probably lead to injustice, hardship and oppression to insist on the debtor's actually shewing the money in order to save an act of bankruptcy, while Lord Cranworth thought that in fact a strictly legal tender was necessary, that is, that the tender ought to be such as in an action would be sufficient if proved to support a plea of tender. This point has not been specifically raised for adjudication under the Bankruptcy Act, 1883 s. 4, ss. (1).

The consideration for a judgment debt may be inquired into. It is the settled rule of the Court of Bankruptcy that the consideration for a judgment debt may be inquired into, because if a judgment were conclusive, a man might allow any number of judgments to be obtained by default against him by his friends or relations without any debt being due on them at all, and thus the object of the bankruptcy laws, the distribution of a debtor's goods among his just creditors, would be defeated (*Ex p. Kibble* (1875) L. R. 10 Ch. 373). This power of the Bankruptcy Court to inquire into the consideration for a judgment debt was described by Lord Esher as "a great power", and even where the judgment has been obtained by the consent of the alleged debtor, the Court is not estopped by the conduct of the parties, but has a right to inquire into the debt. But in such an instance, if the debtor who has consented to judgment takes objections before the Registrar, he must come forward as a witness, or the inevitable result will be that the Court will scout the whole case (*In re Lennox* (1885) 16 Q. B. D. 315). At the hearing of a bankruptcy petition against a debtor founded on a judgment under Order XIV on a dishonoured acceptance which was signed against the debtor as member of a firm, when there was the strongest evidence that the acceptance was not the debtor's acceptance, the partnership having been previously dissolved by mutual consent, the registrar held that he was entitled to go behind the judgment, and being satisfied on the evidence before him that at the date of the acceptance the debtor was not a partner in the firm, he declined to make a receiving order. It was held in the Court of Appeal that on the evidence before him the registrar had rightly exercised his discretion. The question whether a judgment is good, is a different one from that of there being a sufficient petitioning creditor's debt in bankruptcy, and therefore the rule of *res judicata* does not apply to deprive a Court in Bankruptcy of its right to pass round the judgment and leave it standing for all other purposes (*In re Fraser* (1892), 9 Morr. 256). The registrar has a right to go behind the judgment and refuse to make a receiving order when it is founded on a compromise which was unfair, though it may not have been fraudulent (*Ex parte Troup* [1894] 1 Q. B. 404.) This power to give relief can be exercised by the Court of Bankruptcy upon the hearing of a petition by a money-lender for a receiving order against a borrower, the petition being founded on a final judgment recovered in an action in which the debtor did not apply for relief under s. 1 of the Money Lenders Act, 1900 (*In re A Debtor*, [1903] 1 K. B. 705). But it is a preposterous proposition that the Court of Bankruptcy is bound in every case as a matter of course to go behind a judgment; it is only in cases of mistake, fraud, or miscarriage of justice that it will do so and inquire into the validity of the debt (*In re Flatau* (1888) 22 Q. B. D. 83). And it has been observed that the discretion of the Registrar in Bankruptcy is limited to refusing to make a receiving order in respect of the judgment debt (*King v. Henderson* [1898] A. C. 730). The authority of a Registrar in Bankruptcy depends entirely upon the Bankruptcy Act; he has no power to set aside or to review a judgment, or to adjudicate whether there is a valid debt (*Ex p. Vitoria* [1894] 2 Q. B. 387).

The release of one of two joint debtors has the effect of releasing the other and gets rid of a debt equally whether the obligation arises on a judgment or any other security (*In re E. W. A.* [1901] 2 K. B. 642, 648), except when one joint debtor is a bankrupt, because in this case the debtor himself is not liable, but his estate is under a separate liability, which cannot be released (*Ex p. Good* (1877) 5 Ch. D. 46; *Re Wolmershausen* (1890) 62 L. T. 541).

Dismissal of petition—Sufficient Cause. As to the provision in ss. (3) of section 7 of the Bankruptcy Act, 1883, that the Court may dismiss the petition if it is satisfied that for sufficient cause no order ought to be made: it is sufficient cause for dismissing the petition that the effect of a receiving order would be to deprive the debtor of the only asset available for the payment of a composition to his creditors, as where the debtor has a life interest, which ceases on bankruptcy, in the income of certain property. It was judicially called "a vain thing" to let a petition go on under such

circumstances (*In re Robinson* (1883) 22 Ch. D. 816). In a case of this kind it was also decided that it is a fraud on the other creditors and a fraud on the Bankruptcy Court for a petitioning creditor to hold out his hand and say to the debtor "If you will give me £25 I agree to an adjournment", even if the money is not forthcoming *Ex parte Otway* [1895] 1 Q. B. 1895). Again a petition will be dismissed for want of sufficient cause if the Court is clearly convinced, not merely by the statement of the debtor, but from all the circumstances of the case, that there cannot be any assets or any prospect of any coming into existence, and that, if a receiving order is made, the only effect will be a mere waste of money in costs. The Court will refuse to make a receiving order where there is a mere possibility of assets. A Court of justice ought not to take into consideration a possibility of which there is no probability. A receiving order will, on the other hand, be made where there is a probability of assets, or a possibility of assets in a business sense. There is no possibility of assets in a business sense where the debtor has been made a bankrupt years ago, and his income, derived from trust funds, was settled upon him on the terms that, if he became bankrupt, his right to that income ceased at once. The debtor's only asset is regarded as wholly gone, even when the trustees of the settlement have a discretion to make him an allowance (*In re Betts*, [1896] 1 Q. B. 50). The affidavit of a debtor alone is not sufficient to establish a case of no assets. A surety who has signed a promissory note and has failed to pay can be made a bankrupt; there is no legislative bar nor equitable consideration to prevent it even when the petitioning creditor is secured on the estate of the bankrupt. There is no equity arising in bankruptcy law from the circumstance that the surety is a young man and has had no independent legal advice (*Re Hodges, Ex p. Mathews* (1896) 3 Maus. 329).

Adjournment of petition. The debtor (before the Act of 1883) had a statutory right to dispute the adjudication, and a Court of Bankruptcy held that the necessity for punctuality could not always override this right, and that a petition ought to have been adjourned when the debtor arrived half an hour late but previously dispatched a telegram to the Registrar informing him that he was on his way to the Court (*Ex parte Phillips* (1874) 44 L. J. Bky., 11). When both the existence of the debt and the act of bankruptcy have been proved before the Registrar, and after the latter, the debtor has only promised to pay the debt but has not made any valid tender, the Registrar must adjudicate, and may not then adjourn the petition to give the debtor time for payment (*Ex p. Boss, In re Whalley* (1874) L. R. 18 Eq. 375.) The Registrar has power to proceed with the hearing of the petition when a judgment has been obtained establishing the validity of the petitioning creditor's debt, unless he is satisfied that a real appeal from the judgment is pending, when he ought to adjourn the hearing of the petition until after the appeal shall have been disposed (*In re Yeatman* (1880) 16 Ch. D. 283). Where an irregularity occurs in bankruptcy procedure, as where petitioners merely inform the Registrar that an appeal has been disposed of without producing an office copy of the judgment, if the debtor's solicitor then appears upon a day irregularly appointed without taking objection, this appearance cures the technical defect. It is an ordinary rule in bankruptcy procedure that every person who appears upon the original hearing of an application, is bound also to appear upon an adjournment of that hearing (*In re Yeatman* (1880) 16 Ch. D. 283). Under the Bankruptcy Act, 1883, s. 105 (2) and the provisions of the Bankruptcy Rules, ample general powers are conferred on the Court to order an adjournment on such terms as it may think fit. In a case in the Divisional Court, Bigham, J. observed that the granting of an adjournment is in the discretion of the Registrar, but he must exercise that discretion wisely so as not to refuse to adjourn in a case where both sides desired an adjournment for a few days in order that the offer of the debtor, which the local solicitor thought reasonable, might be considered by the principals (*Re Farleigh*, (1904) 21 T. L. R. 198).

Grounds for dismissal of petition and refusal of Receiving Order. It is stated in an authoritative work on bankruptcy, that "it would seem that the grounds for refusing a receiving order will be similar to those which were formerly held sufficient for annulling an adjudication": (Williams on Bankruptcy, p. 51). There are however exceptions, as adjudications were formerly annulled because the bankrupt himself, with a view to dissolve a partnership, procured a commission to be issued against him, and a bankrupt's own commission could not then stand (*Ex p. Harcourt* (1815)

2 Rose 203), but now a debtor can petition (Bankruptcy Act, 1883, s. 8, (1)), a change in the law of bankruptcy that was first introduced in 1849, but was only intermittently followed in subsequent Bankruptcy Acts. Again by the earlier decisions there is a doubt as to whether a commission could be taken out for any other legitimate object than the distribution of the bankrupt's effects, and therefore a commission was formerly held supersedable when the object was to work a dissolution of a partnership (Rose, p. 151) and it was even held that a commission merely to dissolve a partnership could be superseded on the ground of fraud (*Ex p. Christie* (1832) M. B. 314). But in another early case it was held that it was not enough that there should be a bye motive for issuing a Commission, unless there was fraud, and it was not fraud in that case to procure a commission to dissolve a partnership. But in that case the petitioning creditors had no concert with the other partners, and apparently had reason for their conclusion that the bankrupt would ruin the partnership (*In re Wilbran* (1820) 5 Madd. 1). The very intelligible principle which was recognized by this case was said by Lord Watson never to have been departed from in any subsequent decision, the principle that a commission was, in a qualified sense, a legal right, like an action, and that courts of justice had no concern with the motives of parties who asserted a legal right (*King v. Henderson* [1898] A. C. 720, 732). Where money has been extorted from a debtor by way of what is called a "bonus" for the adjournment of the hearing of the petition, a Court in Bankruptcy will refuse to adjudicate and refuse a receiving order even though there is a good petitioning creditor's debt, and an act of bankruptcy has been committed. Such arrangements are regarded as "shocking", and it is more serious when they are made by the petitioning creditor's solicitor without the former's knowledge (*Ex p. King* (1876) 3 Ch. D. 461). In a transparent case of fraud, a petition was dismissed with costs when it was presented for the double purpose of stifling the proceedings against the petitioner's father in law, who had procured advances by fraudulent statements from his mortgagor, and also for the purpose of stifling the claim of the debtor upon the estate of the petitioner's father in law.

Rescission of Receiving Order. Before the Bankruptcy Act, 1883, an adjudication in bankruptcy could be annulled on equitable grounds, as where a fiat was issued by a petitioning creditor who was decidedly an instrument in the hands of another creditor, which was not issued for the benefit of the creditors, but merely to serve the purposes of the latter creditor, to stop a suit in chancery which was brought against him by the bankrupt for an account (*Ex parte Kemp* (1841) 1 M. D. D. 657), or where sufficient impropriety of motive on the part of the petitioning creditor appeared. It required a strong case to warrant the annulling of the adjudication on the ground of a collateral motive; it was not enough, to employ the words of Sir J. L. Knight Bruce, L. J., that "the partners were well disposed towards bankruptcy" (*In re Upfill* (1866) L. R. 1 Ch. 439, 441). Thus it was held that there was no justification in imputing impropriety of motive to a petitioning creditor when he had no prospect of obtaining payment of his debt, except by means of a proposed arrangement between the debtor and his partners, by which it was intended that the debtor should receive a sum of money to go out of the concern, though there was evidence that the petitioning creditor threatened the debtor with bankruptcy proceedings if he would not retire from the partnership (*Ibid.*).

But under the Bankruptcy Act, 1883, an adjudication can only be annulled (apart from a composition or scheme being carried, as to which see *infra*) in a case "Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, when the Court may, on the application of any person interested, by order, annul the adjudication" (Bankruptcy Act, 1883, s. 35, (1)). There is no express provision with regard to the rescission of a receiving order, but Cave J., expressed the opinion that a receiving order, for the purposes of rescission, must stand in the same position as an adjudication (*Ex p. Hester* (1889) 22 Q. B. D. 633.) The consent of all the creditors to an application on behalf of the debtor that a receiving order should be rescinded is not the only thing the Court has to consider. The Court must consider the position of the debtor, the possibility of his getting over his difficulties, and the interests of the public. It is clearly contrary to public interest that a man who is insolvent should be allowed to go on trading. On the question whether there is jurisdiction in the registrar to rescind a receiving order, it was observed by A. L. Smith, L. J., in *In re Lord*,

([1897] 1 Q. B. 241, 247), that s. 104 of the Bankruptcy Act, 1883, gives to every Court having jurisdiction in bankruptcy a general power to review, rescind, or vary any order made by it under the bankruptcy jurisdiction. This general power is to be exercised apart from cases where the debtor proposes a scheme with all the formalities of section 18 of the Bankruptcy Act, 1883. Though this last provision is replaced by section 3 of the Bankruptcy Act, 1890, both provisions are *in pari materia* in not cutting down or controlling the general power to rescind that the Court possesses under s. 104.) Section 104 is an independent section, which by its terms purports to give to the Court an absolute discretion to rescind or vary its orders, and it is not a condition precedent to the exercise of this general power to review that there should have been an approval by the Court of the scheme of arrangement pursuant to section 3 of the Act of 1890. A receiving order may be rescinded under this section even in cases where the creditors have not been paid in full, and where it is rightly made in the first instance. If the Registrar, in the exercise of the absolute discretion conferred on him by s. 104, does rescind a receiving order, the Court of Appeal will not interfere with his decision except on the strongest possible grounds (*In re Davidson* [1894] W. N. 210). In rescinding a receiving order in the exercise of his absolute discretion, the Registrar will use the greatest possible vigilance for the protection of the interests of the creditors and the public. Circumstances that may induce the Registrar to exercise this general power of rescinding a receiving order are that the official receiver is content that it should be rescinded, when he has conducted a preliminary examination of the debtor, and has been safeguarding the interests of the public and creditors by superintending the bankruptcy proceedings for several months, and when he has apparently assented to all that has been done. When this is the case and, in addition, the Official Receiver never asks for any public examination of the debtor or makes any suggestion of delinquency, the Registrar will rescind the receiving order, even though the creditors only receive ten shillings in the pound. Where there are disputed debts, and the petitioning creditor makes an excessive claim, even though more than £50 remains due, if the debtor pays the debt within fourteen days, all further proceedings will be stayed, and no order made as to costs (*In re Harris* (1875) L. R. 10 Ch. 458).

Action for maliciously taking proceedings in bankruptcy. Under the earlier Bankruptcy Acts, the Court might order "satisfaction" to any person aggrieved by having a fiat or petition in bankruptcy fraudulently or maliciously issued against him. (Cf. Williams on Bankruptcy; p. 52.) In *Ex parte Haes* [1902] 1 K. B. 104, Vaughan Williams, L. J., observed—"It is difficult to say that bankruptcy proceedings are in any sense criminal now that a debtor may petition against himself". The consequence of this definitive severance of bankruptcy proceedings from criminal proceedings on that occasion involved a modification of the former bankruptcy practice, which prohibited a debtor from being called in support of a petition, as an extension of the common law rule that you could not call a prisoner to prove the case against himself. It seems clear, though according to the highest available recent authority the point has not been decided, that in an action for maliciously taking proceedings in bankruptcy, it has become necessary to prove special damage beyond the mere costs incurred, for the Court in civil proceedings will not presume damages as it does in cases of malicious prosecutions (*Cottrell v. Jones* (1852) 11 C. B. 713; *Quartz Hill Gold Mining Co. v. Eyre* (1883), 11 Q. B. D. 674). Formerly it was held that an action for maliciously taking proceedings in bankruptcy would lie independently of special damage. But the reason was, that proceedings in bankruptcy were then regarded as criminal or quasi criminal in nature. But "at the present time it is impossible to say that a petition for an adjudication of bankruptcy is in the nature of a criminal proceeding" (cf. the observations of Romer, L. J., in *Ex parte Haes* [1902] 1 K. B. 105), and therefore the analogy of an action for maliciously taking proceedings in bankruptcy is no longer an analogy to an action for malicious prosecution, but an analogy to an action for maliciously taking civil proceedings. But an action will lie for falsely and maliciously and without reasonable or probable cause presenting a petition to wind up a trading company, even though no pecuniary loss or special damage be proved, for the presentation of the petition is, from its very nature, calculated to injure the credit of the company (*Quartz Hill Gold Mining Company v. Eyre* (1883) 11 Q. B. D. 674). Whenever in action for malicious prosecution the judge holds that there is a want of reasonable or probable cause, there is evidence to go to the jury of malice. The reasons by which a registrar is

influenced in dismissing a respondent's petition, or which he may have thought fit to assign in delivering a full written judgment, are immaterial, because they cannot raise an estoppel against the respondent, and if the document is admitted in an action against the respondent for having maliciously presented his petition it amounts to nothing more than hearsay evidence of the opinion of an individual upon points which he had no jurisdiction to determine. The respondent is bound by the registrar's discretion as to making or refusing the order, not by his opinion on points which he had no jurisdiction to determine (*King v. Henderson* [1898] A. C. 720).

Under the earlier statutes an action for malicious abuse of legal process appears to have been the most available remedy for the abuse of the bankruptcy law. It is suggested in an authoritative treatise on bankruptcy law that probably an action for malicious abuse of legal process is the appropriate remedy at the present day where proceedings in bankruptcy have been used as a means of extorting money from a debtor (*In re Davies, Ex p. King* (1876) 3 Ch. D., 461), or for the purpose of threatening to make him a bankrupt, in order to force him by that oppression to give up a just debt which was due to him (*Ex parte Griffin, In re Adams* (1879) 12 Ch. D. 480.) In *re Scott Russell* (1862) 31 L. J. Bky. 37, 46, Lord Justice Knight Bruce observed that it is a general rule that "it is an objectionable, or, at least, an inconvenient mode of proceeding, and one not deserving of encouragement, to found a petition for adjudication upon a disputed balance of a complicated diversity of cross-demands and unsettled accounts". In a case occurring about the same time, the Lords Justices annulled an adjudication in bankruptcy which was founded on a doubtful debt, observing that "the practice of seeking adjudications on doubtful or disputed debts ought in every way to be discouraged" (*In re Potts* (1861) 31 L. J. Bky. 34). It may be supposed that an action for malicious abuse of legal process would lie in cases of this kind, where one party either seeks to make another bankrupt on a disputed or doubtful debt, or where that other has cross demands or cross accounts (Cf. Williams on Bankruptcy, p. 54).

Stay of proceedings on petition. By section 7 (4) of the Bankruptcy Act, 1883, "When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure or compound for a judgment debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment". It is to be noticed of this provision:

1. That it is in the absolute discretion of the Court to consider what is the best thing to be done under the circumstances:
2. No security for costs is required, apparently because in the view of the Legislature it would not be right to require security when the debt was not established.

Where the appeal is *bonâ fide*, the proper order is to stay the petition generally, with liberty to apply, and where it is evidently frivolous, to make a receiving order (*Ex p. Heyworth, re Rhodes* (1885), 14 Q. B. D. 49; *Re French* (1889) 6 Morr. 258).

Section 7 (5) provides that "Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may instead of dismissing the petition stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt". It was held under the Act of 1869 that where proceedings had been stayed for the purpose of trying the sufficiency of the debt upon condition of security being given, and the alleged debtor failed to give such security, the Court should not adjudicate him a bankrupt at once, but should itself investigate the account and ascertain whether there was a debt sufficient to support the adjudication (*Ex p. Harris* (1875), L. R. 10 Ch. 264).

In the case of *In re Yeatman* (1880) 16 Ch. D. 283, it was held that when the proceedings on a bankruptcy petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and the validity of the debt has been established by the judgment of a Court of the first instance, the Registrar has a judicial discretion to proceed with the hearing of the petition and to make an adjudication of bankruptcy upon it, and is not bound to wait for a final decision of a Court of Appeal on the validity of the debt. If,

however, he is satisfied that a *bona fide* appeal is pending from the judgment of the Court of first instance, he ought to adjourn the further hearing of the petition until after the appeal is disposed of. Before fixing a day for continuing the proceedings on the petition, the Registrar is bound to require the production of the judgment establishing the debt, or an office copy of it. But if the day is fixed irregularly, without the production of the judgment, the irregularity will be waived by the appearance of the debtor or his solicitor on the day fixed without taking the objection, which then cannot be raised at any subsequent stage of the proceedings.

At the hearing of a petition, the bankruptcy proceedings can be stayed on the application of the debtor until the validity of a cross claim against the judgment creditor has been determined in an action which has been already commenced, but the debtor, by section 9 of the Bankruptcy Act, will be required to give security. The ordinary course is to take security only for the amount mentioned in the summons, but there is clearly power to take larger security. In a case decided soon after the passing of the principal Act, the debt on which the petition was founded was £250, but it also merely formed part of an alleged larger debt of £1413, made up of debts all connected with each other, and it was held in the Court of Appeal that the order of the Registrar in that case, requiring the debtor to give security for the payment of £1000, was justified under the special circumstances. This case also establishes that on an appeal from an order of a Bankruptcy Court, it is too late for the debtor to raise the objection that at the adjudication there was no proof produced of the debt or the act of bankruptcy, when the debtor appeared at the hearing and did not then object to the order being made on the ground of want of proof (*Re Evans* (1884) 50 L. T. 158). But if the technical objection is taken on the hearing of the petition that the service of the debtor's summons was not proved, the order of adjudication must be discharged. The proceedings on the debtor's summons are a wholly distinct litigation from the proceedings on the petition. The one is a proceeding to compel a man to commit an act of bankruptcy; the other is a proceeding to make him a bankrupt. The two are as distinct as if the one had been an action at law, and the other a petition for adjudication. But where there is no reasonable doubt that an act of bankruptcy has been committed, it is regarded as a captious objection by a debtor that no proof of the service of the summons and the non-payment of the debt after service was adduced at the hearing of the petition (*In re Rogers* (1880) 15 Ch. D. 207). In a case like the above the costs of the appeal will be reserved to be dealt with by the Registrar.

Dismissal of petition by consent. It is not a case of extortion at Common Law for a bankruptcy petition to be at once dismissed by consent on terms (which are not mentioned to the registrar) to the effect that the debtor shall pay the costs of the petition, and agree to pay a fresh debt of increased amount, and it is not an abuse of the process of the court for the creditor, in case of the debtor making default, to present a second petition based upon the new debt, provided he has not used extortion or pressure towards the debtor. As the bankruptcy law stands at present, it does not go far enough to reach and invalidate a transaction of this kind. But the Court of Bankruptcy may perhaps have drifted into a loose system of practice (cf. the observations of Webster M. R., in *In re Eebro* [1900] 2 Q. B. 316, 321, and of Collins, L. J., p. 324), and therefore it is better that the agreement on which the original petition is founded should receive the sanction of the Court after having been mentioned to it. If extortion is once proved an arrangement like the above is vitiated.

Consolidation of petitions. On this subject it is provided by section 106 of the Bankruptcy Act that when a member of a partnership dies insolvent and an order is made under s. 125 of the Bankruptcy Act, 1883, for the administration of his estate in bankruptcy, and afterwards the surviving partner becomes bankrupt, the Court has jurisdiction to direct the proceedings in the two estates to be consolidated (*In re Greaves* [1904] 2 K. B. 493).

Power to change carriage of proceedings. "Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor." By s. 6(1) a the first condition precedent on which a creditor may petition is that his debt amounts to fifty pounds; but, in the case

of a joint petition, it is sufficient that the aggregate amount of the debts owing to these several petitioning creditors amounts to that sum. A creditor's petition in bankruptcy founded on the execution by the debtor of a deed of assignment for the benefit of creditors was dismissed on the ground that the petitioning creditors had assented to the deed. More than three months after the execution of the deed two non-assenting creditors applied to rescind the order dismissing the petition, and asked that their names might, under s. 107 of the Bankruptcy Act, 1883, be substituted for those of the original petitioning creditors. It was held that the Court had no jurisdiction under section 107 to entertain the application, the petition having been dismissed, and more than three months having elapsed since the act of bankruptcy upon which it was founded (*In re Maugham* (1888) 21 Q. B. D. 21). As notice must be given to a debtor (till 1883 an application could be made by petition for an adjudication against a trader behind his back), the services, notices, and periods of time must be all repeated when a petitioner is substituted under this section, because it is contrary, not only to the first principles of bankruptcy law, but to those of every forensic proceeding, that when you are proceeding upon notice, "you should entirely shift the foundations of the case upon which you are proceeding" (*In re Bristow* (1868) L. R. 3 Ch. 247, 241).

Continuance of proceedings on death of debtor. By section 108 of the Bankruptcy Act, 1883, if a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive. Before 1883 bankruptcy proceedings could only be continued after the death of the debtor in cases where they had been carried as far as adjudication in his lifetime. But now by Rule 158 A if a debtor against whom a bankruptcy petition has been filed dies before service thereof, the Court may order service to be effected on the personal representatives of the debtor, or on such other persons as the Court may think fit. The fact that bankruptcy proceedings can now be continued after the death of the debtor affords a very conspicuous instance of the conclusion that at the present time it is impossible to say that a petition for an adjudication of bankruptcy is in the nature of a criminal proceeding (Cf. the observations of Vaughan Williams in *Ex parte Haes* [1901] K. B. 104, 105).

Extension of time for hearing petition. — Adjournment. By Rule 168—"On an application for an extension of time for the hearing of a petition, no order shall be made for an extension beyond fourteen days from the day fixed for the hearing of the petition, unless the Court is satisfied that such extension of time will not be prejudicial to the general body of creditors. Any costs occasioned by such application shall not be allowed out of the estate unless so ordered by the Court". By Rule 167 it is provided that "an application for extension of time for hearing a petition shall be in writing, but need not be supported by affidavit, unless in any case the Court shall otherwise require". By Rule 169—After the expiration of one month from the day appointed for the first hearing of a petition (provided such petition shall have been duly served) no further adjournment of the hearing merely by consent of the parties shall be allowed, except for the reasons set forth in Rule 162 of these Rules, or for such other sufficient reason to be stated in the order for adjournment as the Court shall think fit; but in every such case, unless an order for adjournment is made, the Court shall either make a receiving order or dismiss the petition.

Notice by debtor of intention to oppose petition. By Rule 160 where a debtor intends to show cause against a petition he must file a notice with the Registrar, specifying the statements in the petition which he intends to deny or dispute, and transmit by post to the petitioning creditor and his solicitor, if known, a copy of the notice three days before the day on which the petition is to be heard. Cf. Form 17. A debtor against whom a bankruptcy petition had been presented instructed his solicitor to oppose it. The solicitor inadvertently omitted to give the notice required by rule 36 of the Bankruptcy Rules, 1870, but he appeared at the hearing of the petition, and asked to be allowed to dispute the validity of the petitioning creditor's debt. The Registrar refused to permit this, and made an adjudication. It was considered that the proceedings had been taken too hastily, and that the Registrar ought to have allowed the debtor to adduce his evidence. The adjudication was therefore annulled, but the debtor (who appealed) was directed to pay the costs occasioned by his omitting to give

notice that he intended to oppose the petition. In another case the debtor, having given notice that he intended to oppose the petition, withdrew the notice; but, on the hearing of the petition, without having given a fresh notice, he claimed the right to dispute the amount of the debt, on the ground that, since the withdrawal of the notice, he had made a payment to the creditor which reduced the debt below £50. The creditor was not present, and the Registrar dismissed the petition. In the Court of Appeal, James, L. J., ordered the case to go back to the Registrar in order that the creditor might have an opportunity of adducing his evidence. Bankruptcy is a quasi penal proceeding, and must be treated strictly. The petitioner, therefore, ought to go provided with proof of all essentials, except where the demand of proof would be a merely dilatory requisition; he ought to go armed with proof, for instance, of authority by the company to present a petition when he is a secretary of a company. A petitioner may not think he can go to a hearing without being prepared with proof of essential matters, albeit those matters are not included among the matters specified in section 7 (2) (5) of the Bankruptcy Act and rule 162 (*Ex parte Sanders* (1894) 1 Mans. 382).

Non-appearance of debtor. By the General Rules, 161,—“If the debtor does not appear at the hearing, the Court may make a receiving order on such proof of the statements in the petition as the Court shall think sufficient”.

Second petition on same act of bankruptcy. By the General Rules—“If any creditor neglects to appear on his petition, no subsequent petition against the same debtor or debtors, or any of them, either alone or jointly with any other person, shall be presented by the same creditor in respect of the same act of bankruptcy without the leave of the Court to which the previous petition was presented”.

In a case where a petition was dismissed for want of prosecution because the debtor had promised to secure the petitioning creditor's debt and to pay his other creditors, but subsequently refused to fulfil his promise, it was held, on appeal, that there had been no condonation of the act of bankruptcy, and that a second bankruptcy petition could be again presented, founded on the same act of bankruptcy. In this case, which was regarded by Sir James Bacon, C. J., as one of considerable importance, he observed that if proceedings in bankruptcy were not prosecuted against the debtor under the above circumstances, it would be making the bankruptcy rules sanction the most flagrant injustice on the part of the debtor. The policy of the rule, requiring the creditor to obtain the leave of the Court previous to presenting a new petition founded on the same act of bankruptcy, was explained by Sir James Bacon, C. J., to be that “the proceeding once at an end, is not to be renewed without satisfying the Court that there is proper ground for doing so” (*In re Jagger* (1874) L. R. 17 Eq. 454, 456).

Appearance of debtor to show cause. — Evidence on hearing. By the General Rules, 162, it is provided that—“On the appearance of the debtor to show cause against the petition, the petitioning creditor's debt, and the act of bankruptcy, or such of those matters as the debtor shall have given notice that he intends to dispute, shall be proved, and if any new evidence of those matters, or any of them, shall be given, or any witness or witnesses to such matter shall not be present for cross-examination, and further time shall be desired to show cause, the Court shall, if the application appears to the Court to be reasonable, grant such further time as the Court may think fit”. When a debtor gives notice of his intention to dispute the statements in the petition, and appears at the hearing, the statements in the petition must be proved afresh, even though the debtor does not tender any evidence, otherwise the adjudication will be annulled (*In re Ormston* (1876) 3 Ch. D. 452). A debtor's summons and a bankruptcy petition founded upon the non-compliance with it, are entirely distinct litigations, and the evidence taken upon the one cannot be used upon the other unless previous notice has been given of the intention to use it. Therefore, upon the hearing of a bankruptcy petition founded upon the debtor's non-compliance with a debtor's summons the service of the summons must be strictly proved, even though the debtor has, in an affidavit previously made by him upon an application to dismiss the summons, admitted that the summons has been served upon him. Such an affidavit cannot be used upon the hearing of the petition, unless previous notice has been given of the intention to use it (*In re Rogers* (1880) 15 Ch. D. 207). The evidence of the petitioning creditor is admissible at the hearing of a petition, when

he is ready to give evidence that the debt is due down to the date of the adjourned hearing, and there ought otherwise to be a supplementary affidavit that the debt was due down to the date of the adjourned hearing. The want of affidavit of service is cured by the petitioning creditor, under such circumstances, going into the box (*In re Stables* (1894) 1 Mans. 68).

By the General Rules, 164, the personal attendance of the petitioning creditor and of the witnesses to prove the debt and act of bankruptcy or other material matters, upon the hearing of the petition, may, if the Court shall think fit, be dispensed with. This rule does not imply that when the petitioning creditor's debt is based on a judgment his presence is unnecessary. It is most important that it should be understood that where the petitioner's debt is founded on a judgment verified by the affidavit of the petitioning creditor, that does not deprive the debtor of his right to cross-examine unless and until he gives evidence to displace the judgment. The practice of the petitioning creditor attending upon the hearing of a bankruptcy petition, or, as in old times, upon striking² the docket, has been a uniform practice ever since bankruptcy practice took an established form at all. It was a right practice, and well founded. The consequences of bankruptcy are very serious, and the matters which lead up to it—the petition and the receiving order—are therefore very serious too. It is for that reason that the Court has always insisted on the strongest proof of good faith on the part of petitioners. A person might abuse the process of the Court of Bankruptcy; ex. gr. by petitioning in respect of a debt of which he is only the trustee, without the concurrence of the beneficial owner, without which there is no real debt; or, again, a person has been known to present a petition to stop a prosecution (*In re Adams* (1879) 12 Ch. D. 480). Hence it may sometimes be of great importance to the administration of the bankruptcy law, that the petitioning creditor should attend upon the hearing of the petition, as otherwise he deprives the debtor of his right to cross-examine. The moment it is suggested that the petition is presented for a purpose foreign to the bankruptcy law, the moment there is a scintilla of evidence to that effect, it is the duty of the Registrar to allow cross-examination. But the registrar by virtue of General Rule, 164, has a discretion to dispense with the examination of the creditor and if he exercises this discretion the Divisional Court will not interfere. There is no right under Rule 164 to insist on cross-examining a person who has not been put in the box. A petitioning creditor who uses the statutory affidavit in verification, which he or some person on his behalf may make by section 7 of the Bankruptcy Act, ought to be ready to submit to cross-examination upon it. (Cf. the observations of Vaughan Williams, J., in *In re Purrett* (1895) 2 Mans. 403, 405 *et seq.*)

Proceedings after trial of disputed question. By the General Rules, 165, it is provided on this subject that—"Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided in favour of the validity of the debt, the petitioning creditor may apply to the Registrar to fix a day on which further proceedings on the petition may be had, and the Registrar on production of the judgment of the Court in which the question was tried, or an office copy thereof, shall give notice to the petitioner by post of the time and place fixed for the hearing of the petition, and a like notice to the debtor at the address given in his notice to dispute, and also to their respective solicitors, if known". When the validity of the petitioning creditor's debt has been established by the judgment of a Court of first instance, the Registrar has a judicial discretion to proceed with the hearing of the petition and to make an adjudication of bankruptcy upon it, and is not bound to wait for a final decision of a Court of Appeal on the validity of the debt, but should so wait if satisfied that a *bona fide* appeal is pending. Before fixing a day for continuing the proceedings on the petition, the Registrar is bound to require the production of the judgment establishing the debt, or an office copy of it; but if an irregularity occurs in this respect, and the debtor or his solicitor appears on the day fixed and does not take the objection that neither the judgment nor an office copy was directed to be produced by the Registrar, the irregularity is considered waived, and the objection cannot be subsequently taken (*In re Yeatman* (1880) 16 Ch. D. 283).

Application to dismiss petition where there is no good petitioning creditor's debt. By the General Rules, 166, it is provided on this subject that—"Where

proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided against the validity of the debt, the debtor may apply to the Registrar to fix a day on which he may apply to the Court for the dismissal of the petition with costs, and the Registrar, on the production of the judgment of the Court in which the question was tried, or an office copy thereof, shall give notice to both the petitioner and debtor (and to their respective solicitors, if known) by post of the time and place fixed for the hearing of the application".

Hearing of Petition. By the Bankruptcy Rules, 157 ss. (2), it is provided—"A creditor's petition shall not be heard until the expiration of eight days from the service thereof: Provided that where the act of bankruptcy alleged is that the debtor has filed a declaration of inability to pay his debts, or where it is proved to the satisfaction of the Court that the debtor has absconded, or in any other case for good cause shewn, the Court may, on such terms, if any, as the Court may think fit to impose, hear the petition at such earlier date as the Court may think expedient"; and by 158, that "the Registrar shall appoint the time and place at which the petition will be heard, and notice thereof shall be written on the petition and sealed copies, and where the petition has not been served the Registrar may from time to time alter the first day to be appointed, and appoint another day and hour".

In *Ex parte Discount Company* (1893) 10 Morr. 131, the order of the Registrar appears to have been "the petitioning creditor not appearing, and the debtor not appearing, the petition is dismissed". The petition was not served upon the debtor, but when a petition is presented to the Court, it is not the less presented because it has not been served. Under certain circumstances a petition may be acted on before it is served. The petitioning creditor company, in this case, appealed from the order dismissing the petition, the ground of the appeal in effect being that a bankruptcy petition could not be dismissed for want of prosecution in a case where such petition had not been served. In the Divisional Court the appeal was dismissed with costs for the following reasons. The County Court had a right to get rid of the petition by virtue of an inherent power which enables it to prevent the petition being left perpetually a *terminus a quo* from which the petitioner may start when he can get the Court to appoint another day. There was a suggestion that the non-appearance of the petitioning creditor's solicitor was due to a slip, but the Divisional Court observed, that if this had been the case, "the registrar would have appointed a day and have allowed a re-hearing of the matter as he had jurisdiction to do". But it cannot be supposed that the appointment of a new day for the hearing of the petition is to be obtained automatically without the appearance of the petitioning creditor or any asking for it. It is in the absolute discretion of the registrar to grant a re-hearing on the application of the petitioning creditor under such circumstances, and it seems he may consider it too late.

Receiving Order. On this subject the Bankruptcy Rules (176—183) provide as follows. — **176.** (1) A receiving order shall be in one of the Forms Nos. 28 and 29 in the Appendix, with such variations as circumstances may require. (2) When the receiving order is made on a creditor's petition there shall be stated in the receiving order the nature and date, or dates, of the act, or acts, of bankruptcy upon which the order has been made. Every order shall contain at the foot thereof a notice requiring the debtor to attend on the official receiver forthwith on the service thereof at the place mentioned therein. Cf. the Bankruptcy Act, 1883, s. 5. — **177.** Every receiving order, and order for the appointment of the official receiver as interim receiver of a debtor's property, shall be prepared by the Registrar, and, in cases in which printed forms can be conveniently used, may be partly in print and partly in writing. Where the petitioner is represented by a solicitor the receiving order shall be indorsed with the name and address of such solicitor. — **178.** A copy of every receiving order, and order for the appointment of the official receiver as interim receiver of the debtor's property, sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the Registrar to the official receiver. — **179.** The official receiver shall cause a copy of the receiving order sealed with the seal of the Court, to be served on the debtor. As to service where the debtor is abroad it is provided by the General Rules, 195, that where a debtor against whom a receiving order has been made is not in England, the Court may order service on the debtor of the

receiving order, order of adjudication, order to attend the public examination or any adjournment thereof, or of any other order made against, or summons issued for the attendance of the debtor, to be made within such time and in such manner and form as it shall think fit. — 180. A receiving order shall not be made against a debtor on a petition in which the act of bankruptcy alleged is non-compliance with a bankruptcy notice within the appointed time, where such debtor shall have applied to set aside such notice until after the hearing of the application, or where the notice has been set aside, or during a stay of the proceedings thereon; but in such case the petition shall be adjourned or dismissed as the Court may think fit. — 181. There may be included in a receiving order, an order staying any action or proceeding against the debtor or staying proceedings generally. — 182. (1) Where a receiving order is made, in the High Court the senior Bankruptcy Registrar, and in a County Court the Registrar shall forthwith give notice thereof to the Board of Trade. (2) The official receiver shall forthwith send notice thereof to such local paper as the Board of Trade may from time to time direct, or in default of such direction, as he may select. (3) The notices shall be in the Forms Nos. 31 and 32 in the Appendix, with such variations as circumstances may require. — 183. (1) All proceedings under the Act down to and including the making of a receiving order shall be at the cost of the party prosecuting the same, but when a receiving order is made, the costs of the petitioning creditor (including the costs of the bankruptcy notice [if any] sued out by him) shall be taxed and be payable out of the proceeds of the estate, in the order of priority prescribed by these Rules. By r. 125 of the General Rules it is provided that the assets in every matter remaining, after payment of the actual expenses incurred in realizing any of the assets of the debtor, shall, subject to any order of the Court, be liable to the following payments which shall be made in the following order of priority, namely:—First. The actual expenses incurred by the official receiver in protecting the property or assets of the debtor, or any part thereof, and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor. Next. The fees, percentages, and charges payable under Table B of the Scale of Fees; and any other fees payable to, or costs, charges, and expenses incurred or authorized by the official receiver. The fee which under the Scale of Fees for the time being in force, is required to be affixed to the copy of the cash book when forwarded for audit. The deposit or deposits lodged by the petitioning creditor pursuant to these Rules. The deposit or deposits lodged on any application for the appointment of an interim receiver. The remuneration of the special manager (if any). The taxed costs of the petitioner. The remuneration and charges of the person (if any) appointed to assist the debtor in the preparation of his statement of affairs. Any allowance made to the debtor by the official receiver. The taxed charges of any shorthand writer appointed by the Court. The trustee's necessary disbursements other than actual expenses of realization heretofore provided for. The costs of any person properly employed by the trustee with the sanction of the committee of inspection. Any allowance made to the debtor by the trustee with the sanction of the committee of inspection. Next. The remuneration of the trustee. The actual out of pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

Costs. Although there is power to make a charging order under section 28 of the Solicitors Act, 1860, on money or property recovered or preserved in civil proceedings in the bankruptcy (*Re Wood, ex p. Fanshawe* [1897] 1 Q. B. 314; *Re Deakin, ex p. Daniell* [1900] 2 Q. B. 489), yet having regard to the express provision of this Rule as to priority, the cases in which the Court will exercise this power are rare (*Re Humphreys* [1898] 1 Q. B. 520; see also *ex p. Wingfield* [1903] 1 K. B. 735). In the last mentioned case the assets were finally represented by a sum of about £1890, which was insufficient to pay in full both the £1380 due to the trustee's solicitors and also the petitioning creditor's taxed costs of the re-hearing in the Court below and in the Court of Appeal, and the trustee's solicitors applied that their taxed costs might be paid out of the £1890 in priority to the petitioning creditor's costs of the re-hearing. A purely technical preliminary objection, that the solicitors had no *locus standi*, because they were employed by a trustee who had retired through ill health, was overruled, the Court regarding it as of no substance. There is nothing in the Act or rules that prevents the Court ordering payment of his bill of costs to the solicitor when a new trustee has been appointed. But it

is very inconvenient if any person might come and ask to vary the ordinary rule as to priorities, and they will not be altered in favour of the trustee's solicitors, so as to make "the actual expenses of realizing any of the assets of the debtor" include the expenses of the trustee's solicitors, and their application will be dismissed with costs. In this case the Court held that, on principle, "the taxed costs of the petitioner" include costs to which he is subjected by a rehearing, both in the Court below and on appeal, against the receiving order. It was also held in this case that the actual expenses of realizing the assets mean strictly the costs of a sale of any of the assets. It appears an open question whether a solicitor properly employed by a trustee in bankruptcy can apply direct to the Court for payment of his bill of costs out of the estate—"if the trustee and solicitor were at arm's length, the solicitor could obtain leave to use the name of the trustee on giving him a proper indemnity".

By the General Rules, No. 183 it is provided that:

1. All proceedings under the Act down to and including the making of a receiving order shall be at the cost of the party presenting the same, but when a receiving order is made, the costs of the petitioning creditor (including the costs of the bankruptcy notice [if any] sued out by him) shall be taxed and be payable out of the proceeds of the estate, in the order of priority prescribed by these Rules.
2. When the proceeds of the estate are not sufficient for the payment of any costs necessarily incurred by the official receiver (in excess of the deposit) between the making of a receiving order and the conclusion of the first meeting of creditors, the Court may order such costs to be paid by the party prosecuting the proceedings.

It has been decided that if two creditors present separate petitions the costs of the creditor upon whose petition the adjudication is founded will be paid in priority to the costs of the other creditors (*Re Springall* (1872) 25 L. T. 716).

Debtor's Petition and Order thereon. This subject is invested with great current interest in view of a very recent Parliamentary Report issued by a committee of a thoroughly representative character appointed by the Board of Trade to inquire into the laws relating to bankruptcy and arrangements by insolvent debtors with their creditors and other kindred subjects. (Parl. Pap. 1908 Cd. 4068, 4069.) In *Ex parte Haes* [1901] 1 K. B. 104, Vaughan Williams, L. J., considered that it is difficult to say that bankruptcy proceedings are in any sense criminal since a debtor is allowed to petition against himself. But the recent Parliamentary Paper recommended strengthening the penal provisions of the Bankruptcy Acts, and therefore seems to indicate the possibility of a reversion to the time when bankruptcy proceedings were undoubtedly regarded as being in some sense criminal proceedings; a description which is to be found again and again, not only in cases in the Bankruptcy Court, but in cases in the Common Law Courts, and also in the Court of Chancery. The Report on Bankruptcy Law and Administration recommends more expedition in the prosecution of insolvent debtors who commit serious malpractices by requiring one proceeding only to take place upon the Bankruptcy Court or Registrar ordering the prosecution of a debtor,—namely, a summary hearing before a magistrate or justices, and only requiring the Director of Public Prosecutions to conduct the proceedings when the magistrates commit the offender for trial by a jury. The Parliamentary Paper also recommends that the failure by a debtor to keep books of account for the two years preceding his bankruptcy should be made an offence punishable on summary conviction by imprisonment; the act being already regarded as criminal by the laws in force in France, Germany, and Scotland. The Report makes similar recommendations with regard to turning such delinquencies as gambling and improper speculation, leading or contributing to bankruptcy, into criminal offences; and also recommends that, for the purpose of putting a stop to the prevalent mischief of undischarged bankrupts carrying on trades and businesses in assumed names without disclosing their identity and position, the existing penal provisions of the Bankruptcy Acts on this subject should be strengthened.

The terms of the Bankruptcy Act, on the subject of a debtor's petition and order thereon are as follows:

8. 1. A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without

the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order.

2. A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court."

A debtor's petition must contain his name and description and also his address. It is not sufficient for a debtor's petition merely to contain his address at the date on which the petition is presented; it must also, if the occasion requires, contain the address at which he resided or carried on business when he contracted the debts or liabilities which at the date of the petition remained unpaid or unsatisfied (General Rules, 144 [1]). The provisions in the Bankruptcy Act, which confer on a debtor a right to present a bankruptcy petition against himself do not introduce any restrictions on his right to petition, so long as he complies with certain requisitions as to the contents of the petition. Neither is the debtor's right to petition subject to any limitation by the Bankruptcy Rules. But a debtor's petition may amount to an abuse of the process of the Court (*Re Bond* (1888) 21 Q. B. D. 17; *Re Betts* [1901] 2 K. B. 39), and, therefore, in spite of the language of ss. (1) of section 8 of the Bankruptcy Act, 1883, the Court, on the presentation of a petition by a debtor, may either dismiss the petition, or rescind a receiving order founded on it. It is not an abuse of the process of the Court for a debtor to present a bankruptcy petition, because he has only one creditor (*Re Heccard* (1890) 24 Q. B. D. 71), or, when that is the case, and he is possessed of an inalienable pension and very small assets, for him to file a petition in order to evade a judgment summons (*In re Painter* [1895] 1 Q. B. 85). But it is an abuse of the process of the Court for a debtor to file a petition when he is undischarged under three previous bankruptcies in two of which he has himself petitioned with the view of evading committal orders (*In Re Betts* [1901] 2 K. B. 39) or when a joint petition is presented by persons who are neither partners nor joint traders (*Re Bond* (1888) 21 Q. B. D. 17). If a receiving order has been made on a petition which is an abuse of the process of the Court, the Court has power to rescind it. *In Re Bond* (supra) involved an abuse of the process of the Court, because by joining two debtors who ought not to be joined the revenue is deprived of a fee of £5 which would have to be paid had there been separate petitions instead of a joint petition. The petition in that case was also an abuse of the process of the Court for another reason, because it had for its object the payment of the expenses of a debtor with no assets out of the assets of another debtor. The two persons were husband and wife, and the petition was really that of the wife alone, out of whose pocket the whole of the costs of the petition up to that time had been paid. When a husband files his own separate petition, he must not do it out of the assets of his wife. It is impossible to say that the presentation of a petition is an abuse of the process of the court when it will not have the result of relieving the debtor from the payment of a debt to a solicitor creditor, as where the very money which the latter seeks to get (the personal earnings of a debtor with no other assets) by obtaining from time to time a committal order will come to him by reason of the adjudication. It was decided in *In re Roberts* [1900] 1 Q. B. 122 that "Under s. 44 of the Bankruptcy Act, 1883, which vests in the trustee all property belonging to the bankrupt at the commencement of the bankruptcy or acquired by him before his discharge, all personal earnings of the bankrupt between the commencement of his bankruptcy and his discharge belong to the trustee, save only what is necessary for the support of the bankrupt and his family". Under the circumstances just before alluded to, where a debtor whose only asset consisted in personal earnings from his employment presented a petition in bankruptcy, there was, therefore, no abuse of the process of the court, as his personal earnings belonged to the trustee in bankruptcy. The debtor gained the protection of the bankruptcy law, and avoided being sent to prison with the inevitable result of being dismissed from his employment,—“but I am not at all prepared to say that the Legislature did not intend that a debtor who had been subjected to such pressure should relieve himself from that pressure by obtaining an adjudication in bankruptcy against himself”. (Per Vaughan Williams, L. J., in *In re Hancock* [1904] 1 K. B. 585, 590.) A debtor's petition is not an abuse of the process of the Court, and an adjudication founded on it will not be annulled, when it is filed just before a judgment summons is taken out against the debtor under the Debtors Act, 1869. It makes no difference in

cases of this kind whether the debtor has some assets (*In re Archer* (1904) 20 T. L. R. 390) or whether he has practically no available assets (*Ex parte Painter* [1895] 1 Q. B. 85).

Solicitor's costs in case of petition by debtor. On this subject it is provided by Rule 113 that "the solicitor in the matter of a bankruptcy petition presented by the debtor against himself shall, in his bill of costs, give credit for such sum or security (if any) as he may have received from the debtor, as a deposit on account of the costs and expenses to be incurred in and about the filing and prosecution of such petition; and the amount of any such deposit shall be noted by the taxing officer upon the allocatur issued for such costs". Form, B. R. 143, F. 4. Place for filing, Section 95, B. R. 145. Attestation, B. R. 146. Deposit of five pounds at least by petitioner, B. R. 147. The Court may adjudicate the debtor a bankrupt on his own application as soon as a receiving order is made, B. R. 190. As to petition by a firm, see B. R. 261. Description and address of debtor, B. R. 144 (1). Disallowance of costs of unnecessary petition, B. R. 126.

Part. VII. Effect of Receiving Order — Powers of Official Receiver — Statement of Affairs — Public Examination — First Meeting of Creditors — Order of Adjudication.

Effect of Receiving Order. The provisions of the principal Act on the effect of the receiving order are contained in s. 9 ss. (1) and may be summarized by saying that the official receiver thenceforth receives all the debtor's property, and all creditors, except secured creditors, are thenceforth divested of any remedies they previously possessed against the person or property of the debtor.

Powers of official receiver. The official receiver is to remain receiver of the property until the creditors appoint a trustee in manner provided by section 21 (see section 7, (1) (a)), and to act as trustee until one is appointed (section 54 (1)), and during any vacancy (section 70 (1) (g) section 87, (4)). In an important decision on the power of the official receiver to sell the bankrupt's property, even though it be not of a perishable nature (*In re Parker* (1885) 15 Q. B. D. 196), the question before the court was whether the official receiver, being by the Act in terms made trustee on the adjudication, had the power of selling the bankrupt's property before a creditors' trustee is appointed. In deciding that the official receiver had power at the time to sell the property, and that the property passed by virtue of his sale, Brett, M. R., observed "After a careful examination of the Act I base my judgment absolutely and entirely upon this, that ss. 54 and 56 are plain and simple in their language; that the language giving a power of sale to the trustee, includes the official receiver, when acting as trustee, and that there is nothing in any other part of the Act which authorizes the Court to give to those sections any but their plain and simple interpretation". It is not very important to insist on there being several main stages in the proceedings in a bankruptcy, but the receiving order is the dividing line with regard to the validity of executions, and also with regard to the relation back of the title of the trustee, between the period of the presentation of the petition and the period of the release of the creditors' trustee. The concluding words of s. 54 (1)—that "immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee—render it necessary to conclude that the official receiver must be the trustee in all those cases (in practice the great majority) in which a trustee is not appointed until after the adjudication. There can be no other interpretation put upon the language of the Act than that the property of the bankrupt vests in the official receiver quâ trustee, unless a trustee has been appointed by the creditors. This view is confirmed by the succeeding subsections of section 54, whose provisions cannot be supposed to be confined to the case where there is a vacancy in the office of trustee after a trustee has been appointed by the creditors. In the case of a vacancy in the office of trustee, the property would again pass to the official receiver. The Bankruptcy Act therefore provides a complete chain of trustees, viz., the official receiver acting as trustee until a trustee is appointed by the creditors; then the trustee appointed by the creditors; and, in case of a subsequent vacancy, the official receiver again becomes the trustee until a new trustee is appointed. By section 56 of the Bankruptcy Act the trustee may sell all or any part of the property of the bankrupt. In the facts of the case before the Court

in *In re Parker*, the official receiver sold property which was not of a perishable nature, but, Baggallay, L. J., observed, citing section 56, "there you have language large and ample enough to authorize the doing of that which the official receiver has done in the present case:" (15 Q. B. D. 210). Section 70 of the Bankruptcy Act is, Baggallay, L. J., observed, "a very useful provision, enabling the official receiver, when there is no trustee, to act as manager of the debtor's estate. It may be (in fact in the great majority of cases it is so) that the bankrupt is carrying on some business, and that it is to the interest of the creditors that it shall not be at once stopped and wound up, but shall be allowed to be carried on for a time, and this section enables the official receiver to carry it on". The costs and expenses of a sale by the official receiver, when acting as trustee in bankruptcy in the interval between the adjudication and the appointment of a trustee by the creditors, are properly payable out of the bankrupt's estate. In the case of small bankruptcies, the official receiver is the only trustee, unless the creditors resolve otherwise (Bankruptcy Act, 1883; s. 121). The case of *In re Parker* was carried to the House of Lords a year later and the decision of the Court of Appeal was upheld. The Earl of Selborne considered that the general scheme, or general intention, of the Bankruptcy Act is that the office of trustee should be one office *ejusdem generis* all through, in all events and at all times from the date of the adjudication. This is the consistent and reasonable view of the scheme of the Act. Arguments founded on a general scheme, or general intention, are to be treated with caution; and Lord Selborne rejected as inconsistent the view that the Act distinguished between trustees and that this was its intention. The creditors may, simultaneously with the adjudication, appoint a trustee of their own selection. If they do not, then until they do so or decline to do so within the time allowed them for that purpose the official receiver is to be trustee *de facto*, and the estate is to vest in him, and he is to be trustee for the purposes of the Act. A certain time is allowed to the creditors to choose a trustee for themselves. If they do, when that choice is complete it supersedes the earlier official appointment, and the vesting follows. If they do not, then after the time allowed them the Board of Trade comes in, and then the trustee appointed by the Board of Trade is trustee, and if there is a vacancy from time to time and no one is appointed to fill the vacancy, either by the creditors or by the Board of Trade, the official receiver comes in again. Finally, Lord Selborne observed, there is nothing in the Bankruptcy Act which restricts or limits the powers of the official receiver, when trustee, in a manner not applicable to a trustee selected by the creditors. The earlier sections (54, 56), if they stood alone, merely place the official receiver, after the adjudication, in the position of a trustee in bankruptcy, and the plain, simple and ordinary meaning of the language of those sections is not qualified or cut down by the 70th section (the only other section which has any bearing upon the matter) which merely says that so far as the official receiver is acting in the character of receiver or manager he shall do certain things, and is entirely silent as to what the official receiver may do as trustee. Lord Blackburn observed that there was nothing in the Bankruptcy Act from which it can be inferred that its spirit is to take away all power and control from the officials and give it to the creditors. "It seems to me quite a possible thing that where there is an official receiver who also happens to be appointed trustee the powers may be cumulative, he may still continue to have his powers as official receiver whatever they are, and also at the same time any of the powers of trustee that are not inconsistent with them. Lord Blackburn admitted the possibility that the power of an official receiver who is also trustee might be abused existed. Every other power might be abused, but it was "pretty clear" to him that a control and a power would be exercised by the Court to prevent an official receiver who was also trustee from abusing his powers (*Turquand v. Board of Trade* (1886) 11 App. Cas. 291).

Consequences of receiving order as to remedies of creditors. In a case where Lindley, L. J., made some important observations on the effect of a receiving order, the exact issue was—"if an action is brought by a person against whom a receiving order has been made under the Bankruptcy Act, 1883, but who is not adjudicated bankrupt, can he be properly ordered to give security for costs?" It was held, on the authorities (*Chitty's Archbold*, Vol. I, part 5, ch. 33, p. 398; *United Ports and General Insurance Co. v. Hill* (1870) L. R. 5 Q. B. 395), that there was nothing to take the case out of the general rule, that the poverty and pos-

sible or probable bankruptcy of a plaintiff is not a ground for requiring him to give security for costs. But on the subject of the effect of a receiving order, Lindley, L. J., observed that "the law relating to receiving orders is contained in ss. 5 *et seq.* of the Bankruptcy Act, 1883; and from them it appears that a receiving order is not equivalent to an adjudication of bankruptcy; it does not divest the debtor of his property, nor make him a bankrupt, nor place him under the disabilities of an adjudicated bankrupt. . . . What a person against whom a receiving order has been made recovers as plaintiff in an action is his property both legally and equitably, although he must, when he recovers it, hand it over to the official receiver for the benefit of his creditors if he does not pay or compound with them: "(*Rhodes v. Dawson* (1886) 16 Q. B. D. 548, 554). In *In Re Flack* [1900] 2 Q. B. 32, it was held that a trustee in bankruptcy is not liable for the arrears of water rate due from the debtor, because he is in the position of an incoming tenant, and therefore, though he can be compelled to pay in advance for a future supply of water, if a trustee in bankruptcy pays such arrears under protest, the water company must refund the money obtained from the trustee under compulsion.

On the making of a receiving order, an official receiver is thereby constituted receiver of the property of the debtor, and thereafter, except as directed by the Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy (including a debt which by reason of notice of an available act of bankruptcy, the creditor is personally incapable of proving) is to have any remedy against the property or person of the debtor in respect of the debt, or to commence any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may direct. A receiving order has been called "the dividing line" in bankruptcy proceedings, and it seems that a receiving order, so long as it stands, is conclusive evidence as against a third person that the act of bankruptcy on which it is founded was in fact committed, and that the title of the trustee relates back to that act of bankruptcy. It is not necessary to join the official receiver to a pending action against the debtor, a further proof that the property of the debtor does not vest in the official receiver, as it does in his trustee after he has been adjudicated bankrupt. (*Duffield v. Williams* [1896] 1 Ch. 939.) A debtor against whom a receiving order has been made is expressly protected from the operation of commitment orders under s. 5 of the Debtors Act, 1869. (County Court Rules, 1889, 1892, Ord. XXV, rr. 29—31; 32 (a); B. R. 361; *Ford v. Nuttall* (1891) 64 L. T. 241; *Re Ryley* (1885) 15 Q. B. D. 329. See Mayor's Court Rules, 1892, Ord. IX.) The receiving order begins to take effect on the day on which it is made, although it may be signed afterwards, or even not drawn up at all (*Re Manning* (1885) 30 Ch. Div. 480).

A creditor cannot retain the benefit of an execution or attachment issued by him and completed after the date of the receiving order against the trustee in bankruptcy of the debtor (Section 45 of the Bankruptcy Act, 1883).

Secured creditors. As to who are secured creditors not affected by the receiving order, by the interpretation section, s. 168, of the principal act, a secured creditor means "a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof as a security for a debt due to him from the debtor". The following are instances of "secured creditors" who may realize their securities in spite of a receiving order having been made;

1. A judgment creditor who has obtained equitable execution against the bankrupt's land by the appointment of a receiver before bankruptcy.
2. A plaintiff in an action on a bill of exchange where money has, prior to the bankruptcy of the defendant, been paid into Court to abide the event, is a secured creditor to the extent to which his debt may be substantiated (*Ex parte Banner, re Keyworth* (1874) L. R. 9 Ch. 379; *Ex parte Bouchard, re Moojen* (1879) 12 Ch. D. 26; *The Cella* (1888), 13 P. D. 82. For other cases cf. Baldwin on Bankruptcy and Bills of Sale, pp. 444 and 445).

The following are instances of persons who are not "secured creditors" with the right to realize their securities when a receiving order has been made;

1. A judgment creditor who has obtained an order for the appointment of a receiver (*Re Dickinson, ex p. Charrington* (1889) 22 Q. B. D. 187; and other cases collected in Williams on Bankruptcy, p. 59).
2. A person entitled to the benefit of an order to enforce which a writ of sequestration has been issued and served (*Ex p. Nelson, re Hoare* (1880) 14 Ch.

D. 41; *Re Hastings, ex p. Brown* (1892) 9 Morr. 234) even where money has been recovered by virtue of the process, but paid under order of the Court into a sequestration account and not to the credit of the action in which the sequestration order issued (*Re Pollard* [1903] 2 K. B. 41).

An assignee can enforce his right against the trustee in bankruptcy, but a person who possesses a mere licence to seize the debtor's property, which he has not issued execution under prior to the act of bankruptcy, is not a secured creditor. Whether a particular instrument operates as an assignment or a mere licence to seize often raises *apices juris* of bankruptcy law. (Williams on Bankruptcy, p. 59.) At the Common Law some *actus interveniens*, such as seizure by the assignee, is requisite to pass the property to the assignee in after-acquired property, but otherwise in Equity. But even in Equity, if the agreement to assign does not come into existence until after the bankruptcy, the equitable assignee is not a secured creditor (*Wilmot v. Alton* [1897] 1 Q. B. 17). The trustees of a marriage settlement by which the husband has covenanted to transfer all his after-acquired property (except business assets) to the trustees of the settlement upon trusts for the benefit of his wife and children were held "secured creditors", though bankruptcy supervened shortly after the date of the settlement, and though the property was transferred only five days before a second act of bankruptcy (*Re Reis, ex p. Clough* [1904] 2 K. B. 769). One ground of the decision was that the liability under the covenant was not a provable debt and therefore was not released by the first bankruptcy and the subsequent discharge. It is different in the case of an assignment of after-acquired chattels given as a security for a debt which is not proved in the bankruptcy; in this case the security is discharged by the bankruptcy (*Collyer v. Isaacs*, (1882) 19 Ch. D. 342). A charge on money already earned by the assignor, but which did not become payable till after he had become bankrupt is valid against the trustee (*Ex p. Moss, re Toward*, (1885) 14 Q. B. D. 310) and the same may be said of an assignment of instalments under a hiring agreement accruing after bankruptcy (Per Mathew, J., in *ex p. Rawlings*, (1889) 22 Q. B. D. 193). A person is not "a secured creditor" who only holds a charge on something not already earned by the assignor and which could only be earned after the assignment had been made (*Ex p. Nicholls*, (1883) 22 Ch. D. 782; and the discussion on the cases collected in Williams on Bankruptcy, p. 61).

Statement of Affairs by Debtor. By section 16 of the principal Act, it is provided that

- "1. Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed, or as the official receiver may require.
2. The statement shall be so submitted within the following times, namely:
 - a) If the order is made on the petition of the debtor within three days from the date of the order;
 - b) If the order is made on the petition of a creditor, within seven days from the date of the order. But the Court may, in either case, for special reasons, extend the time.
3. If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.
4. Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect this statement at all reasonable times, and take any copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the trustee or official receiver."

By the General Rules 217, 324, the official receiver must furnish the debtor with instructions for the preparation of his statement of affairs, and must personally interview the debtor. If the debtor cannot himself prepare a proper statement of affairs, the official receiver, by Rule 326, may employ some one to assist the debtor, subject to any prescribed conditions, and at the expense of the estate. An acknowledgment of a debt by a debtor in his statement is neither an express pro-

mise nor an absolute unconditional admission of the debt, from which the law will infer a promise to pay, and therefore that acknowledgment will not take a debt out of the operation of the Statute of Limitations (*Everett v. Robinson* (1858) 28 L. J. Q. B. 23). An admission by a bankrupt in his statement of affairs that a debt is due from him may not be actually against his interest at the time it was made, as when it should turn out there would be no surplus after paying the creditors, and therefore, to make such an admission evidence against his trustee of the existence of a debt, is "an attempt to enlarge the rules as to admissibility in evidence of admissions against interest". Those rules do not make an admission admissible in evidence "which may or may not turn out at some subsequent time to have been against his interest": (*In re Tollemache* (1884) 14 Q. B. D. 416). If a debtor, in his statement of affairs, makes an admission of the receipt of trust funds, which he is subsequently indicted for the misappropriation of under 24 & 25 Vict. c. 96, s. 80, the statement of affairs is admissible in evidence, because it is not a statement made by him in any compulsory examination before any court upon the hearing of any matter in bankruptcy within the meaning of s. 27 (2) of the Bankruptcy Act, 1890. The decision of the Court would have been different in this case if the debtor had admitted the receipt of the trust moneys in cross-examination, or in a deposition on which he could have been cross-examined (*R. v. Pike* [1902] 1 K. B. 552). Official receiver may extend time without application to Court, B. R. 218. Form of statement, B. R. 217, and F. 46. By partners, B. R. 263. Instructions by official receiver, B. R. 324, F. 46. Applications to commit must be made in Court, B. R. 6 (f); supported by affidavit, B. R. 85. Notice and hearing of application, B. R. 86. Suspension of order to commit, B. R. 87.

Public Examination of Debtor. Unless the debtor is a lunatic, or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend, when the Court may dispense with his examination under s. 2, ss. 2 of the Act of 1890, the Court must, when it makes a receiving order hold a public sitting for the examination of the debtor, on a day it appoints, and if the debtor without good cause fails to attend to be examined as to his conduct, dealings, and property, a warrant may be issued for his arrest (B. R. 185, s. 25 (1) (d.)) The official receiver must serve a copy of the order appointing the time and place for holding the examination on the debtor (this need not be served personally, but may be sent by prepaid registered letter), and the official receiver must also give notice of such order to the creditors, to the Board of Trade, and to some local paper. The examination must be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs, but it may be adjourned; and the debtor's examination will be adjourned *sine die*, and the debtor be forthwith adjudged bankrupt, when

1. The Court is of opinion that the debtor is failing to disclose his affairs.
2. The debtor fails to attend.
3. The debtor fails to obey an order of the Court, and when, in addition to any of the above contingencies, the debtor has not previously been declared bankrupt.

Either a creditor or his solicitor authorized in writing may examine the debtor (s. 17 (4)). The creditor's solicitor, in the discretion of the Court, may be allowed his costs (s. 105 ss. 1). The debtor may also be examined on oath either by the Court (s. 17 (7) (8)), by the official receiver (who may employ a solicitor with or without counsel for this purpose (s. 17 (5) (6))), or by the trustee if he is appointed before the conclusion of the examination. Answers made by the debtor in bankruptcy proceedings are made evidence against him by s. 17 of the Bankruptcy Act, but are not evidence against the beneficiaries under a deed executed by him (*Trustee v. Hunting* [1897] 2 Q. B. 19). Generally a debtor's answers in bankruptcy proceedings are not admissible in evidence in proceedings in the same bankruptcy by the trustee against parties other than the bankrupt (*In re Brunner* (1887) 19 Q. B. D. 572). But a debtor's answers may be used against him when he gives evidence as a witness (*Re Cunningham* (1899) 6 Mans. 199), and "it is plain that a bankrupt is bound to answer questions which the Court allows to be put, and that the answers, although they tend to criminate him, may, by the express words of the Act of Parliament afterwards be read in evidence against him": (Per Lord Coleridge, C. J., in *In re a Solicitor* (1890) 25 Q. B. D. 17, 25). The conduct of the public examination of a debtor by the registrar was thus described by Lord

Esher, M. R., "The examination is a mere mode of obtaining evidence from the bankrupt himself. . . . The registrar has to regulate the examination—to determine what questions are properly put and what questions cannot be put, and to enforce upon the debtor, as far as he can, at that time, in that place, and for that purpose, his obligation to answer; but it is a mere mode of collecting evidence". The bankrupt may be asked any proper questions with regard to his own dealings, but may not be asked, and if asked cannot be required to answer, any questions with regard to any other person's dealings. The registrar cannot finally determine anything, and merely collects evidence without finally adjudicating (*In re Cronmire*, [1894] 2 Q. B. 246, 250 and 251). An offer of money to a debtor on his examination to induce him to be silent as to inconvenient topics is a negotiation which is a contempt of Court—a corrupt influencing of a witness to disregard his duty as a witness and as a bankrupt, and to endeavour to conceal what it is his primary duty to disclose (*In re Hooley, Rucker's Case* (1898) 5 Mans. 331). As to the Forms and Rules relevant to the public examination of a debtor, cf. Williams on Bankruptcy; p. 71; Baldwin on Bankruptcy and Bills of Sale, pp. 196—201.

First Meeting of Creditors. By s. 15 of the principal Act it is provided on this subject that

"1. As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

2. With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the First Schedule shall be observed".

As to the requisitions in the Bankruptcy Rules referred to cf. Williams on Bankruptcy, p. 67; Baldwin on Bankruptcy and Bills of Sale p. 201 *et seq.* In *Ex parte Hope*, (1878) 9 Ch. D. 398, 409, where the decision partly turned on the validity of resolutions passed at a first meeting of creditors, James, L. J., observed that "it is important to state what is the right course to be taken at these meetings. . . . the debtor is there to answer inquiries. And beyond all question, he ought to answer any questions properly and honestly put to him, put really for the purpose of assisting the meeting in arriving at a conclusion with regard to those things upon which they are then and there to determine". But it is not the meaning of the Act that a creditor, for some ulterior purpose of his own, may, for any purpose whatever not connected with the object of the meeting, ask questions at any length, for any number of hours. A meeting may approve of a debtor's refusal to answer a question of that kind. Some one at the meeting must uphold its discipline, and as the chairman is not a judicial officer, it is possibly for the meeting to decide whether a question shall be allowed. A meeting is not competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting unless there are present, or represented thereat, at least three creditors, or all the creditors, if their number does not exceed three (General Rules, 23, Sched. 1). In calculating a quorum, those only who are entitled to vote are to be reckoned (Rule 257). The answers of the debtor to questions put to him at the meeting are part of his statement (*Ex p. Aaronson*, (1878) 7 Ch. D. 713). It was considered reasonable, under the Act of 1869, for a creditor to have a shorthand writer present on his behalf (*Ex p. Solomon*, (1882) 20 Ch. D. 281). This last case also decided that it is not the duty of the chairman to take notes of the debtor's examination. The chairman is, however, bound to cause minutes of the proceedings to be drawn up, and fairly entered in a book kept for that purpose, and the minutes are to be signed by him, or by the chairman of the next ensuing meeting (General Rules 25, Sched. 1).

The Order of Adjudication. By s. 20 (1) of the principal Act:

"1. Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act, within fourteen days after the conclusion of the examination of the debtor or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt; and thereupon

the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

2. Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, and the Court by which the adjudication is made, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall for the purposes of this Act be the date of the adjudication." An ordinary resolution means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution (Section 168 (1)). There are four cases in which, after a receiving order has been made, the Court is to adjudge the debtor bankrupt under this section:
 - a) If the creditors so resolve;
 - b) If they pass no resolution;
 - c) If they do not meet;
 - d) If a composition or scheme is not accepted or approved within fourteen days from the conclusion of the debtor's examination, or such further time as the Court may allow.

In *Ex p. Pinfold* [1892] 1 Q. B. 73, 75, Vaughan Williams, J., commenting on s. 20, observed—"the scheme of the Bankruptcy Act seems to be this: where the Court has come to the conclusion that the case is a proper one for adjudication, it is to make a receiving order in the first instance instead of an adjudication, in order that the creditors may have an opportunity of deciding whether they wish for an adjudication or not, but the opportunities which they are given for that purpose are limited to those mentioned in s. 20; and if they do not avail themselves of them, then an adjudication is to follow as a matter of course". It is in the absolute discretion of a Court of Bankruptcy whether a debtor shall be adjudicated bankrupt or not, and it will adjourn the proceeding when the creditors have not really been in a position to come to a final decision on the question whether there ought to be an adjudication of bankruptcy or not, when the heads of a scheme are before the Court which may be practically beneficial to the creditors, and when no reasonable person can doubt that it is for the benefit of all parties that there should be an adjournment (*In re Lord Thurlow* [1895] 1 Q. B. 726).

Part VIII. Compositions and schemes of arrangement.

Proposal and acceptance of composition. By the Bankruptcy Act, 1890, s. 3, replacing section 18 of the principal Act of 1883, it is provided that the debtor may lodge a proposal in writing for composition in satisfaction of his debts within four days of making his statement of affairs. The official receiver, after giving notice to all the creditors, convenes a meeting, at which, if a majority in number and three-fourths in value of all the creditors approve, the debtor's scheme or composition becomes accepted. Assent or dissent may be expressed by letter. After the conclusion of the public examination of the debtor, an application may be made to the Court for its approval of the scheme. This approval proceeds on various grounds, that the scheme is calculated to benefit the general body of the creditors, that the official receiver has reported in favour of it etc. But the Court's approval of the scheme is not final, and the scheme may subsequently be annulled in certain events, as where it has been obtained by fraud. But a scheme approved by the Court and not subsequently annulled is binding on all the creditors, and disobedience to it may involve contempt of Court. When it annuls a scheme, the Court adjudges the debtor bankrupt.

The remodelling of the provisions of the principal Act relating to composition by the Bankruptcy Act, 1890, was one of the principal changes introduced by the latter. The statement of affairs has to be submitted, in the case of a debtor's petition, within three, and in the case of a creditor's petition, within seven days after the making of the receiving order unless the time is extended (Section 16 (2.)). The majority necessary for carrying the resolution is the same as that required under the repealed section for the confirming resolution, viz., a majority in number and three-fourths in value of the creditors who have proved. The meeting must be held before, but the application to approve the scheme cannot be heard till after, the conclusion of the public examination. Where there are joint

debtors, the Court may, in case of illness or absence abroad of one of them, dispense with his public examination for the purpose of approving a composition or scheme (Section 105 (6)). Under sections 125, 126 of the Act of 1869, objections to proofs, though taken at the first meeting, were decided by the registrar on the application to register. Now, however, by rule 14 of Schedule 1, the chairman of the first meeting has, subject to appeal, to decide on the admission or rejection of proofs. It seems, therefore, that objections to proofs cannot now be taken on the application to the Court to approve the composition or scheme, though the fact that an appeal is pending from a decision of the chairman as to a proof would seem to form a ground for adjourning the application to approve. In *Ex parte Campbell, In re Wallace* (1885) 15 Q. B. D. 213, it was urged for the appellant-creditors that the report of the official receiver is not *prima facie* evidence of the statements contained in it. But Brett, M. R. noticing this contention, observed that "by section 28 the report is made *prima facie* evidence for the purposes of that section, and it seems to me that whatever mode of proof of the facts referred to in subs. 3 of s. 28 is sufficient for the purposes of that section, is by subs. 6 of s. 18 made sufficient evidence of the same facts for the purposes of that subsection. The report of the official receiver is, therefore, *prima facie* evidence of those facts." (Ibid. p. 217).

Approval of Court. In *In re Burr* [1892] 2 Q. B. 467, Fry, L. J., observed that even if the condition in subs. 9 of s. 3 of the Bankruptcy Act, 1890, the debtor's proposal of a scheme providing reasonable security for the payment of seven shillings and sixpence in the pound, is satisfied, it is still left to the Court to exercise a judicial discretion. In the facts of that case, where the debtor had committed three offences against the bankruptcy law, Fry, L. J., observed that the Court ought to refuse to give its approval to the scheme, in the exercise of that judicial discretion which it was bound to exercise, as it would be of the worst possible example that a person who did not keep any proper business books should escape from the bankruptcy law, and obtain his discharge without the delay which would be certainly imposed if the bankruptcy proceedings were to go on.

By s. 3 (9) the Court ought to refuse to receive a debtor's proposal for arrangement if facts appear on which his discharge would be withheld if he were adjudged bankrupt, unless the composition or scheme of arrangement, as the case may be, "provides reasonable security for payment of not less than seven shillings and sixpence in the pound on all the unsecured debts provable against the debtor's estate". There is no reasonable security for the payment of seven and sixpence in the pound when the estimate in the debtor's scheme is only arrived at by the debtor procuring a purely conditional release from some of his creditors, only to take effect if the debtor's proposal for a composition shall be approved by the Court, or if the receiving order shall not in any other manner be rescinded. The mere fact that some creditors have given only a provisional release conditional on the scheme being approved by the Court is fatal to its being so approved, at least when the circumstances under which the releases have been obtained have not been submitted to the consideration of the Court as part of the scheme (*In re Pilling* [1903] 2 K. B. 50). But if absolute unconditional releases of debts are obtained, not by the debtor, but by some body else without the privity, knowledge, or consent of the debtor, the security required by the Bankruptcy Act, 1890, s. 3 (9) does not extend to the debts for which such releases have been given (*In re E. A. B.* [1902] 1 K. B. 457).

In a case where the registrar approved of a composition which had been reported against by the official receiver and the Court of Appeal considered that the registrar had wrongly exercised his discretion, Lord Esher, M. R., after observing that the registrar ought to look very closely into the conduct of the debtor, continued, "but it is also the duty of the registrar to have regard to the interest of the creditors, and, if the composition or scheme is clearly the best thing for the creditors, I cannot think that the registrar is bound in law to refuse to approve it, because the debtor has been guilty of offences under s. 28. The registrar ought to look at both sides, and not to punish the creditors by overstrictness in regard to the conduct of the debtor". It may be the duty of the Court to refuse to sanction the composition by reason of the debtor's conduct, and that ingredient is of the more importance whenever it is extremely doubtful whether the proposed composition or scheme is the best thing for the creditors. If the composition or

scheme is obviously the most advantageous thing for the creditors, the conduct of the debtor becomes of less importance. The registrar ought to take great care that an improper composition or scheme is not forced upon dissentient creditors, and a composition or scheme is considered to bear this character when the Court looks with distrust on the trustee's estimate of the probability of recovering the debts which are due to the estate and regards with considerable suspicion his estimate of the amount of his own remuneration and costs, when the Court is wholly dissatisfied about the dividend being a reasonable composition, and when the composition is really intended to preserve the debtor's business for him and not really intended for the benefit of the creditors. When, in addition to the above, the debtor has been guilty of offences against the bankruptcy laws, there seems no doubt the Court will not approve the composition, and dissentient creditors who appeal will have their costs of the appeal out of the bankrupt's estate (*In re Genese* (1886) 18 Q. B. D. 168). At the date of this last mentioned case, it was possible for a composition by which only three shillings in the pound was offered to procure the approval of the Court, though in the facts of that case it was considered inadequate, as the now replaced section of the principal Act did not fix a minimum dividend for which a debtor could compound with his creditors, but by section 3 of the Bankruptcy Act, 1890, if the debtor has been shewn to have committed any offences against the Bankruptcy Laws he cannot offer his creditors less than seven and sixpence in the pound and must offer reasonable security for the payment of that sum. This case was followed in a very complicated case where an application was made by a debtor to the Court by special leave, to approve a scheme of arrangement which had been accepted by the statutory majority of the creditors. The Court observed that the report of the official receiver was so long and complicated that it was impossible for it to try all the series of questions raised by it. In this case (*In re Bottomley*, (1893) 10 Morr. 262), the three principal matters charged against the debtor were:

1. That he had within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an undue preference to certain creditors.
2. That he had been guilty of a fraudulent breach of trust.
3. That his assets were not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities.

As to what amounts to an undue preference (1890) see *In re Skegg* (1890), 7 Morr. 240. In *in re Bottomley* the Court defined undue preference as "such interference with the assets as would give a preference to any creditor"; and did not consider there had been such interference in the facts of that case. Under the Act of 1890, the legislature has provided a hard and fast line, and it provides that the Court shall refuse to approve the proposal "unless it provides reasonable security for payment of not less than seven and sixpence in the pound on all the unsecured debts provable against the debtor's estate". What is the meaning of reasonable security? It means "a reasonable chance of some such sum obtained"; or "a reasonable commercial probability that the sum suggested will be realised".

In the Scale of Fees and Percentages, Table A—"Every application to the Court to approve a scheme of arrangement, a fee computed at the following rates on the gross amount of the estimated assets (but not exceeding the gross amount of the unsecured liabilities), viz.:—£1 on every £100 or fraction of £100 up to £5000, and 10s on every £100 or fraction of £100, beyond £5000. In *in re Bottomley* the Court, observing the fee had not been paid, considered it necessary to adjourn the application so as to give an opportunity for it to be paid. The Court observed that if the debtor's scheme were not approved, the application would have been made, and here might have been no funds on which the Court could come, and hence it adjourned. It appears the estimate of the fee is the debtor's, as under the Act of 1869. The fee payable on application by the debtor, is, by the General Rules, repayable to him out of the estate.

- The Court will withhold its approval of a proposed scheme or composition, when:
1. The proposal is not reasonable, or not calculated to benefit the general body of creditors (Williams on Bankruptcy; p. 75; Baldwin on Bankruptcy; p. 742).
 2. The debtor has been guilty of misconduct of a gross character, such as would make it against public policy to sanction the scheme (*Ex p. Rogers*

- (1884), 13 Q. B. D. 438; *Ex p. Campbell, re Wallace* (1885), 15 Q. B. D. 213; *Ex p. Reed* (1886), 17 Q. B. D. 244; *Ex p. Ledger* (1886), 3 Morr. 169).
3. The scheme contains a provision that "the debtor shall be discharged when the committee of inspection shall so resolve:" (*Ex p. Clarke* (1884), 13 Q. B. D. 426). Such a scheme is held unreasonable, for the order of approval when made operates, if nothing be said, as an immediate discharge, or a future time should with the approval of the Court, be fixed by the scheme (*Ex parte Clark* (1884), 13 Q. B. D. 426; see *Re Croom* [1891] 1 Ch. 695; and see as to a proposal being made dependent on the annulment of the bankruptcy being obtained, *Re Beer* (1903), 88 L. T. 334).
 4. Generally speaking, the scheme gives the creditors no more advantage than they would have possessed in bankruptcy, whilst it deprives them of some of the powers they would in that case have possessed, and also deprives the Court of all control over the administration of the property (Williams on Bankruptcy, p. 76; Baldwin on Bankruptcy, p. 743). The following cases instance this principle, which is of general application;
 - a) The Court will withhold its approval of a scheme which purports to clothe the trustee with all the powers he would have possessed in bankruptcy; as where the creditors agree to make a section applicable, though not so intended by the Acts (*Ex p. Bischoffsheim* [No. 1] (1887), 19 Q. B. D. 33). As to section 27, see now the express words of Act of 1890 s. 3 ss. 16;
 - b) When it provides for judgment being entered up against the debtor in the manner enacted in cases of discharge by the Bankruptcy Act, 1890, s. 8 (2) (v) (*Re Aylmer* (1888), 20 Q. B. D. 258; decided on the repealed sections), but the operation of section 23 of the Act of 1890 (as to interest over 5 per cent.) may be excluded (*re Nepean* [1903] 1 K. B. 794).
 5. Proofs have not been tendered for a large proportion of the debts set down in the statement of affairs, or if the Court considers that the proofs which have been tendered require investigation by a trustee (*Ex parte Rogers* (1884), 13 Q. B. D. 438); because the Court must have regard to the debtor's assets and liabilities.
 6. The proposal approved of by the Court is not exactly that accepted by the creditors, as where the creditors imposed an additional term to an agreement whose object was the annulment of the bankruptcy, and this had only been agreed to by the Court simpliciter. In *Lucas v. Martin* (1888) 37 Ch. D. 597, 606, Lord Halsbury, L. C., observed it was a novelty to which he would give no countenance that a recital of a certain fact in an order of a Court approving of a scheme of arrangement was binding upon all the world; and if such a recital is inaccurate, as in the facts of that case, the order of the Court is not binding or conclusive as against a stranger, not a party to the bankruptcy, who had proposed to purchase the assets of the bankrupt for such a sum as would pay the expenses of the bankruptcy and the preferential debts in full within fourteen days after the approval of the scheme by the Court. In such a case the approval of the Court becomes essential for the making of the agreement *talis qualis*. The Court of Appeal is not estopped by an order of a Court of Bankruptcy from annulling an adjudication when it purports to confirm that which the creditors in fact never agreed to; finally.
 7. The Court may refuse to approve where the debtor has made an ante-nuptial settlement which the Court thinks was intended to defeat or delay creditors, or was unjustifiable, having regard to the state of the settlor's affairs when it was made.

By section 10 of the Bankruptcy Act, 1890, a similar provision to that contained in the last part of subsection 12 of section 3 is enacted in the case of orders of discharge, so that now, neither an order of discharge, nor the approval of a composition or scheme, will release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability. In *Hardy v. Fothergill* (1888) 13 App. Cas. 351, the question was whether the liability of a person upon a covenant of indenture was

discharged by his statutory liquidation under the Bankruptcy Act of 1869, and it was held both in the Court of Appeal and in the House of Lords that such a future and contingent liability was a debt provable in bankruptcy. Lord Halsbury, L. C., observed that from the year 1826 the legislature had been engaged in the effort to exhaust every conceivable possibility of liability under which a bankrupt might be, to make it provable in bankruptcy against his estate and relieve the bankrupt for the future from any liability in respect thereof. Lord Macnaghten observed in this case that neither the bankrupt himself, nor his friends, who might be disposed to help him, could tell whether he was really a free man and in a position to make a fresh start in life, if he were left with outstanding liabilities arising under contract hanging over his head. In *Flint v. Barnard* (1888) 22 Q. B. D. 90, 92, Lord Esher, M. R., observed that "section 19 of the principal act excepts from the binding effect of the composition debts or liabilities from which the debtor would not be discharged by an order of discharge in bankruptcy, and this exception seems to me to shew that the legislature has so dealt with the matter as to make subs. 8 include liabilities". The reasonable interpretation of the words — "so far as relates to any debts due to them", is "any claim against the debtor such as would be provable in bankruptcy". If a creditor procures a judgment against a debtor in respect of a claim for racing bets he is bound by a scheme of arrangement though he cannot receive any benefit under it, as though this is a debt provable in bankruptcy, the trustee may go behind the judgment, and declare that the judgment creditor is not entitled to participate with the other creditors (*Seaton v. Deerpursh* [1895] 1 Q. B. 853).

Default. Under the Acts of 1861 and 1869, the effect of default in the payment of a composition was to remit the creditor to his original rights, so that he could sue for the whole debt, giving credit, of course, for the amount of compensation received, and in case of default by the debtor the Court of Bankruptcy would not restrain an action by the creditor. Nothing under these Acts discharged the debtor but actual payment of the composition, although before default the debtor could plead the resolution (Williams on Bankruptcy, p. 78; and cases there collected). Under the Act of 1883, the creditor has precisely the same remedies in case of default by the debtor whether the composition was entered into before adjudication under section 18, or after adjudication under s. 23. The composition entered into under either section is capable of being enforced by one of two methods—either by an adjudication of bankruptcy against the debtor, or by an order to pay the composition, obedience to which order can be enforced by process of contempt. These are "consequences" of the composition. In *ex parte Godfrey* (1887), 18 Q. D. 670, 674, Lord Esher, M. R., observed that he always inclined to a cumulative construction of the language of a statute when it conferred remedies, when that cumulative construction was the business meaning of the words; and therefore he considered that the Court has power, in case of a default by a debtor under s. 23, to adjudicate him bankrupt, but it can also make an order upon him to pay the composition. A creditor who is not paid his composition is not to bring an action for his original debt, he is not to be put to that trouble and expense, whether the composition has been entered into after or before adjudication (*Ibid.*; Williams on Bankruptcy, p. 78). In the current edition of a repertory of bankruptcy law it is considered that the effect ss. (5) of section 24 of the Judicature Act, 1873, providing (inter alia) "that nothing in this Act contained shall disable either of the said Courts (the High Court of Justice or the Court of Appeal) from directing a stay of proceedings in any cause or matter pending before it if it shall think fit", is to render it open to the debtor to plead the presentation of the petition and the making of the receiving order, and the acceptance and approval of the composition resolution, as entitling him to a stay. Another reason for supposing that even in case of default the creditor will not be able to sue the debtor for the original debt is that by section 9 of the principal Act, no creditor has any remedy against the person or property of the debtor after the making of a receiving order, except with the leave of the Court, though this conclusion is affected by Bankruptcy Rule, No. 208, which expressly says that the receiving order is discharged on the approval of a composition or scheme. By the Bankruptcy Rules, No. 211, the remedy of any person aggrieved (this would seem to indicate a creditor who is not paid) by default in payment under a composition or scheme, either by the debtor or his trustee, is to enforce payment by application to the Court, and not by action.

Remedy of creditor by adjudication after rejection of scheme by Court. Casuists may make a distinction between an assertion known to be false, and an assertion not known to be true, but, where there has been an intentional departure from the truth, there is no legal distinction between the two. In a case where a debtor "very grievously exaggerated the value of his assets", though the Court of Appeal considered that fraud could not be imputed to him, yet it also concluded that the debtor did in fact mislead his creditors into the belief that they would be paid 20s in the pound; the Lords of Appeal decided that there was ample jurisdiction under s. 18 (11) of the Bankruptcy Act, 1883, to set aside this scheme, and to order the debtor to be adjudicated a bankrupt (Cf. the judgment in *In re Moon* (1887) 19 Q. B. D. 676 and 677). When it is a question whether the Court will confirm a composition or adjudicate the debtor a bankrupt, all that the Court has got to do is to make up its mind whether it is probable that anything will be got for the benefit of the creditors by making the debtor a bankrupt. If the Court, while not prepared to say what advantage may accrue to creditors under an order for adjudication, thinks it nevertheless very likely that they will get something by it the creditors are entitled to an adjudication. As an instance of what advantage may accrue to creditors by adjudication, it has been judicially indicated that creditors may, by an adjudication, be able successfully to question some of the provisions of the settlement. When the Court refuses to approve a scheme of arrangement with creditors proposed by a debtor, an immediate adjudication of bankruptcy against him will be made only in the most exceptional circumstances (*In re Pilling* [1903] 2 K. B. 50; *In re Hew* [1905] 1 K. B. 285). In a case which indicates what these exceptional circumstances may be, the debtor was a money lender who had been twice bankrupt, and had been engaged in many rash speculations of the wildest description—hardly indeed honest—and had not kept any proper business books. There were, however, some qualifications, arising in the fact of his having paid off a considerable portion of the debts which were due under his previous bankruptcies (*In re Burr* [1892] 2 Q. B. 467).

Power of debtor over property after approval of composition. What creditors mean to do, in substance and intention, by passing resolutions authorizing a debtor's trustee to accept a composition from the debtor, is that in consideration of the composition the business is to be carried on by the debtor, and that in carrying it on he is to exercise such control over the assets as will enable him to raise money for the purpose of paying the composition. There is therefore an implied authority given to the debtor to the extent of authorizing any dealing with the assets in the ordinary course of business, or for the purpose of raising money to carry on the business or to pay the composition (*In re Simons* (1881) 16 Ch. D. 505, 511). In *Troughton v. Gitley* (1766) Amb. 629, Lord Camden held that commission creditors lost their priority over subsequent creditors on the principle that "if a man having a lien stands by and lets another make a new security, he shall be postponed"; and a decree was made that the subsequent creditors were to be preferred to the commission creditors, out of the effects possessed by the administrator. It is, however, indicated that the principle of this decision, which was affirmed in a number of cases, cannot be relied on, owing to the provision as to proof by new creditors in the event of an adjudication following the composition. The effect of Rule 208, seems to be that the debtor is to be allowed to deal with his own property, at least where there is no trustee or person appointed under the composition or scheme. In *In re Croom* (1891) 1 Ch. 695, it was held that the approval of a scheme of arrangement by the Court is equivalent to an order of discharge, and therefore that the debtor is entitled to after-acquired property, ex gr. a legacy bequeathed by the will of a testator dying subsequently to the date of the approval of the scheme by the Court. But the creditors may stipulate and the debtor may assent, with the approval of the Court, that after-acquired property shall be brought in; such a contract is unobjectionable and may be enforced.

Agreements to pay in full, and to give preference. In a case to which the principles of the many decisions both in Courts of Law and in Courts of Equity against the validity of underhand dealings in favour of a particular creditor contemporaneously with a composition for the benefit of the general body of the creditors, were declared by Lord Selborne, L. C., to be fully and entirely applicable, it was held that, after composition resolutions under s. 126 of the Bankruptcy Act, 1869, had been passed and registered, an agreement by the debtor with one of the cre-

ditors who was bound by the resolutions, to pay him his debt in full was inconsistent with good faith to the other creditors, and with the spirit of the bankruptcy laws, even though the creditor at the same time agreed to give the debtor fresh credit. The debtor does not stand in the same position as a discharged bankrupt until the composition has been fully paid (*In re Andrews* [1881] 18 Ch. D. 664). Such an agreement is valid after a debtor has obtained his discharge in a liquidation by arrangement (*Jakemann v. Cook* (1879) 4 Ex. D. 26). Secret preferential agreements are not only contrary to the bankruptcy laws, but were frauds at common law in the case of a common law composition. Where a creditor refused to execute a deed of trust containing a composition arrangement unless the insolvent executed a promissory note for the residue of his demand, Lord Kenyon, Ch. J., considered it "a transaction bottomed in fraud, which is a species of immorality", and the security was considered not merely voidable, but void (*Cockshott v. Bennett* (1788) 2 T. R. 763.) In *Daughlish v. Tennent* (1866) L. R. 2 Q. B. 49, 54; Mellor, J., observed—"this is a deed of arrangement voluntarily made between the debtor and certain creditors, the effect of which is said to be to release the debtor from his debts. To put the case on a broad ground, it is an agreement between the debtor and each creditor that they are contracting on terms of equality as to each and all, and if by a secret bargain some creditors have an advantage over other creditors, it is a fraud upon those who must be presumed to have signed the deed upon the understanding that all the creditors should be placed on the same footing." (Cf. Williams on Bankruptcy, p. 80; referring to *Mallalieu v. Hodgson* (1851), 16 Q. B. 689; *Ex p. Phillips* (1888), 36 W. R. 567; *Ex p. Milner* (1885), 15 Q. B. D. 605). On a bill by a bankrupt, who had compounded with his creditors for eight shillings in the pound, and where bankruptcy had been annulled, the Court set aside, with costs, a secret bargain, whereby the bankrupt agreed to pay one creditor in full, in consideration of his becoming surety for payment of the composition (*Wood v. Barker* (1865) L. R. 1 Eq. 139). A banker holding bills and acceptances as a security for advances made to a customer, took a guarantee from the brother of the customer that the loss of the bank should not exceed £2000. This transaction took place after the customer had commenced proceedings for the liquidation of his affairs, unknown to his other creditors, with a view to prevent the bank from opposing a composition. It was held upon a bill filed by the banker to enforce performance of the agreement, that the arrangement, which would have the effect of giving one creditor a secret advantage over the others, could not be sustained, and the bill was dismissed with costs (*McKewan v. Sanderson* (1875) L. R. 20 Eq. 65). The creditors of a debtor resolved to accept a composition payable in three instalments, the third instalment being guaranteed by a surety. Before the resolution was passed, the debtor had agreed with the surety to indemnify him against any liability which he might incur under his guarantee by depositing goods with him. This agreement was not made known to the creditors. After the resolutions were registered the surety accepted bills of exchange for the amount of the third instalment of the composition, and certain goods were deposited with him by the debtor. The debtor paid the first instalment, but failed to pay the second, and thereupon he filed a liquidation petition. Afterwards the surety paid the third instalment. It was held that the agreement with the surety was valid, and that he was entitled to retain the goods as against the trustee under the liquidation, because standing upon the resolutions for the composition alone, there was nothing whatever to prevent the compounding debtor doing whatever he liked with his assets—he had bought the assets from the creditors by means of two acceptances of his own and a third acceptance of his brother, and therefore was absolute master of those assets in exactly the same way as any other purchaser (*In re Robinson* (1876) 1 Ch. D. 537). A bankrupt, desiring to obtain the annulment of his bankruptcy, induced some of his creditors to sell their debts to two trustees, who were provided with funds for the purpose, and who were as assignees of the debts to consent to the annulment. The trustees obtained assignments of the several debts on various terms, including an assignment of a debt of £25000 in consideration of £2000 paid by them to the creditor. This assignment was made in pursuance of an agreement between the creditor and the bankrupt, whereby the bankrupt agreed to pay to the creditor a further sum of £6000 at a future time. The bankruptcy was annulled on the petition of the bankrupt, with the consent of the creditors or their assignees. The agreement to pay the £6000 was not disclosed to the Court or to the other creditors. It was held that

there was no duty to disclose the agreement to the Court, inasmuch as the function of the Court was merely to ascertain whether the proper parties consented; and that the agreement was valid. Lindley, L. J., in delivering judgment, observed "the key to this case is to be found in the fact that when the creditors consent to the annulment of adjudication of bankruptcy each creditor consents upon such terms as he may think proper. They do not work in unison. It is not like a composition deed or anything of that kind. The bankrupt makes the best arrangement he can with each creditor, and all the Court usually inquires into is whether that creditor consents". Davey, L. J., in this case, observed that there was no fraud upon the Court, and no fraud upon the creditors, because it was utterly unlike a composition, the principle of which is that all creditors share alike, because in the case under consideration, each creditor was at liberty to make his own bargain (*Levita's claim* [1894] 3 Ch. 365; for the judgment of Lord Lindley p. 372; for that of Lord Davey, p. 374).

As to concealment of a security, see *ex p. Jameson* (1876) 3 Ch. D. 488. In that case a judgment creditor delivered a writ of fi. fa. to the sheriff before the debtor filed a liquidation petition, but no seizure was made until after the creditors had resolved to accept a composition, the resolutions had been registered, and the debtor had paid the amount of the composition to a trustee appointed by the creditors. It was held that the execution creditor was not a creditor holding a security at the time when the composition became binding, and that he could not enforce his writ against the debtor's goods afterwards.

In *Smith v. Cuff* (1817) 6 M. & S. 160, the defendant, who was a creditor of the plaintiff, an insolvent trader, refused at first to sign an agreement of composition by which he was to receive with other creditor ten shillings in the pound, saying he would either have a commission of bankruptcy or payment of the whole by instalments. In consequence of this communication, the plaintiff agreed to give the defendant two promissory notes to make up the full amount of his debt, and about four days afterwards the defendant signed the agreement of composition. There was no evidence at the trial where these notes were so made and delivered; but four days after the defendant signed the composition, a bill of exchange drawn by the debtor and accepted by a third party and also a promissory note, for the full amount of ten shillings in the pound of the defendant's debt, were delivered to him. The other creditors, together with the defendant, then duly executed a release. One of the promissory notes given by the plaintiff to the defendant before the latter signed the agreement of composition, was indorsed and delivered by the defendant to a third party, who brought an action upon it against the plaintiff. The plaintiff paid the full amount of the note, and then brought an action against the defendant to recover what he had paid the latter over the ten shillings in the pound due under the composition. Judgment was given for the plaintiff, Lord Ellenborough, C. J., observing that it had been uniformly decided that an action lies in any case where money has been obtained by oppression, and in fraud of the party's own act as it regards the other creditors. In another case there was an almost contemporaneous arrangement between the debtor and a creditor who had signed a composition deed, that the former should continue to make future payments to the creditor's nominees. On equitable grounds alone, the Court refused to allow the transaction to stand, Ball, V. C., observing—"the taking of any such engagements, whether the debtor is bound to pay or not, is equally obnoxious to the rule which prohibits private or independent agreements with creditors at the time when a general arrangement is made with them. Those agreements are called by law fraudulent, and are so far considered that money paid thereunder has been recovered back." (*In re Lenzberg's Policy* (1877) 7 Ch. D. 650). The Court refused to regard the memorandum providing for future payments to the creditor's nominees as an independent transaction, distinct from the composition; but, on the other hand, concluded that the moneys in question were moneys paid by the debtor for the use of the creditor.

Power to accept composition or scheme after bankruptcy adjudication. By section 23 of the Bankruptcy Act, 1883, it is provided that—"Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken

and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication. (2) If the Court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him, or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare. (3) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy”.

By subsection (19) of section 3 of the Bankruptcy Act, 1890, it is provided that “the acceptance by a creditor of a composition or scheme shall not release any person who under the principal Act and this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.” This provision “would seem to refer to the individual act of the creditor” (Williams on Bankruptcy, p. 81). And the acceptance and approval of a composition or scheme will not release any person who, at the date of the receiving order, was a partner or co-trustee with the debtor, or was jointly bound (see *Megrath v. Gray* (1874), L. R. 9 C. P. 216); or had made any joint contract with him, or any person who was surety. Applications to approve a composition or scheme must be made in Court: Bankruptcy Rules 6 (b).

Forms of proposal, notice, and report (Read B. R. = Bankruptcy Rules). B. R. 196, F. 80 A, 81, 81 A, 81 B, 82. Application for approval, B. R. 197. Notice to official receiver, B. R. 198, to creditors, B. R. 199. Opposed Applications, B. R. 200. Time for filing report, B. R. 201. Hearing and appeal, B. R. 202. No costs to debtor, if refused, B. R. 203. Provision for costs and charges, B. R. 205. Fee, B. R. 206. Evidence and order, B. R. 204. Correction of formal slips, B. R. 207. Preparation of order, B. R. 37 A, 37 B. Possession of property on approval, B. R. 208. When official receiver to be trustee, B. R. 209. Security by trustee, B. R. 210. Dividends, B. R. 214. Proof of debts, B. R. 215. Default, B. R. 211. Annulment, B. R. 213. Vesting of property on annulment, B. R. 212. Voting letter, F. 82. Adjudication on failure of composition or scheme, B. R. 192. As to compositions in case of joint and separate estates, see B. R. 266; B. R. 267; B. R. 267 A. Applications to commit must be made in Court, B. R. 6 (f), supported by affidavit, B. R. 85. Notice and hearing of application, B. R. 86. Court may direct order of committal not to issue if thing done within specified time, B. R. 87.

Part IX. Special Manager — Trustee in Bankruptcy — Committee of Inspection — Discovery of Assets — Executions — Relation back of Trustee's Title — Property divisible amongst Creditors — Disclaimer — Set-off — Interest.

Special Managers. By section 12 (1) of the principal Act, it is provided on this subject that:

- “1. The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.
2. The special manager shall give security and account in such manner as the Board of Trade may direct.
3. The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or in default of any such resolution, as may be prescribed.”

It is in the absolute discretion of the official receiver as to whether a special manager shall be appointed, and no appeal lies from his decision (*Re Whittaker* (1884), 1 Morr. 36). Where, during the pendency of a bankruptcy petition which is ultimately dismissed without any receiving order having been made upon it, the official receiver, on being appointed interim receiver under s. 10 of the Bankruptcy Act, 1883, appoints, in the exercise of his power under s. 12 a special manager of the debtor's business, the special manager is entitled to be reimbursed out of his receipts from the business his expenses, including remuneration, properly incurred by him in carrying it on until the dismissal of the petition (*In re A. B. & Co.* [1900] 2 Q. B. 429). Even where the bankruptcy proceedings fall to the ground in this sense, that neither the official receiver nor the special manager have any authority to carry on the business because the receiving order is erroneous as the alleged debtor is a foreigner, it would be grossly unjust for the Court to allow its own officer to be thrown over and be unfairly dealt with by making him pay more than the balance which, on taking the account, would be found to be really due from him (Cf. the observations of Lord Lindley, M. R., at p. 439). About forty or fifty special managers are appointed every year.

Trustee in Bankruptcy. By section 21 of the principal Act it is provided on this subject that.

- "1. Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.
2. The person so appointed shall give security in manner prescribed to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connexion with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.
3. Provided that where the Board make any such objections they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide on its validity.
4. The appointment of a trustee shall take effect as from the date of the certificate.
5. The official receiver shall not, save as by this Act provided, be the trustee of the bankrupt's property.
6. If a trustee is not appointed by the creditors within four weeks from the date of adjudication, or in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the official receiver shall report to the matter to the Board of Trade, and thereupon the Board of Trade shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.
7. Provided that the creditors or the committee of inspection (if so authorized by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified the person appointed shall become trustee in the place of the person appointed by the Board of Trade.
8. When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee."

Again by section 4 of the Bankruptcy Act, 1890, repealing section 22 of the principal Act, it is provided that "A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty".

The creditors may appoint a trustee:

- a) Where the debtor is adjudged bankrupt, as provided by section 20, or under section 16 (3), or the Bankruptcy Act, 1890, s. 3 (15);
- b) Where they have resolved that he be adjudged bankrupt;
- c) In place of one appointed by the Board of Trade (subsections (6) and (7)).

The resolution is to be at the first meeting or an adjournment thereof; see principal Act, section 15 (1) and First Schedule. Ordinary resolution: see section 168 (1). Committee of Inspection: see section 22. As to objection by the Board of Trade to a trustee, see *re Games* (1884) 1 Morr. 216; *Re Martin* (1888), 21 Q. B. D. 29; *Re Stovold* (1889), 6 Morr. 7; Rules 300, 301. It is a valid objection to the appointment of a person as trustee, according to the decision of the Court of Appeal in *In re Lamb* [1894] 2 Q. B. 805, that he is appointed to act as trustee for two estates, and has a pecuniary interest in the success of one only and the two estates stand in the relation of debtor and creditor. If a person, by his appointment as trustee in bankruptcy, is placed in a position in which it would be difficult for him to act with impartiality, a valid objection can be taken to his appointment by "any person aggrieved" (s. 104), and the Board of Trade may be such a person. It has been judicially considered that the history of the bankruptcy laws shews exactly the contrary to the hypothesis that the creditors of a bankrupt are the best persons to decide all questions which arise in reference to his estate. It is a good objection that the trustee is an accounting party to the estate, and will have, as trustee, to investigate his own account. If the trustee appears and the objection to his appointment is upheld, he will have to pay costs (*Re Mardon* [1896] 1 Q. B. 140). The objection to the appointment of a person as trustee is a question of law. As to trustees generally cf. Part V and Bankruptcy Rules 297—319 and Williams on Bankruptcy, pp. 84—86 and Baldwin on Bankruptcy and Bills of Sale, pp. 206—223; pp. 252—256; 542—549.

The Committee of Inspection. By section 22 of the principal Act it is provided that the creditors qualified to vote may appoint from among their own number, at any meeting, a committee of inspection which be constituted of from five to three persons. The holders of proxies or general powers of attorney from such creditors are eligible. The object of the appointment of a committee of inspection is the superintendence of the administration of the bankrupt's property by the trustee, and hence there is to be no committee in a small bankruptcy (s. 121). The committee of inspection must meet once a month at least, and may be convened at any necessary time on the requisition of the trustee or any member of it. The committee may act by a majority of their members present at a meeting, but are not to act unless a majority of the committee are present at the meeting. When there is no committee, the Board of Trade fulfils its functions on the application of the trustee. The trustee is, not less than once in every three months, to submit to the committee of inspection for audit the record book and cash-book, with any other requisite books and vouchers (General Rules 287, 288). No member of a committee of inspection, directly or indirectly, by himself, or any employer, partner, clerk, agent, or servant, is entitled, except under and with the sanction of the Court (Rule 317 [a]), to make any profit out of any transaction arising out of the bankruptcy, or to receive out of the estate any payment for services rendered in connection with the administration of the estate, or for any goods supplied by him to the trustee for or on account of the estate. After the business has been undertaken from which the profit has been derived, the Court has no power to give its sanction. "Profit" means everything but disbursements, so that a solicitor who is a member of the committee of inspection, cannot be allowed anything in respect of his general office expenses. It is important here to see who is entitled to vote at the first or any other meeting of creditors; in what way; and in what proportion. By rule 9, Sched. 1 a creditor may not vote at a first nor at any other meeting of creditors in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. The expression "contingent" debt refers to a case where there is a doubt if there will be any debt at all:—"a debt the value of which is not ascertained" means a debt the amount of which cannot be ascertained until the happening of some future event. "An unliquidated debt" includes, not only all cases of damage to be ascertained by a jury, but beyond that extends to any debt where the creditor fairly admits that he cannot state the amount. The estimated amount of untaxed costs is an unliquidated debt in respect of which a creditor is not qualified to vote. The proper course for the creditor to pursue is

either to apply for leave to sign judgment and tax his costs, or else to swear to such a sum as the costs when taxed would at least amount to (*In re Dummelow* (1873) 2 R. 8 Ch. 997).

Discovery of Debtor's Property. By section 27 of the principal Act it is provided on this subject, that the Court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property; and if any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant addressed as aforesaid, cause such person to be apprehended and brought up for examination. Under s. 27 (4) if any person on examination before the Court, admits that he is indebted to the debtor, the Court may, on the application of the official receiver or trustee, order him to pay to the official receiver or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination. If a person admits on examination that he has in his possession any property belonging to the debtor he may be ordered to deliver it up to the official receiver or trustee. A person may be examined out of England under this section if he would be liable to have been examined if he were in England. The first important question that arises under this section is — who are the persons who may apply for the examination of a witness who is known or suspected to have in his possession any of the estate or effects belonging to the debtor? The trustee can make an application *ex debito justitiæ* to summon anybody for examination whom he might wish to examine as to the estate and dealings of the bankrupt, because he fills a responsible position. But “it would be a sad, a monstrous thing if any one who claimed to be the creditor of a bankrupt was entitled *ex debito justitiæ* to summon for examination anybody whatever he might wish to examine as to the estate and dealings of the bankrupt?” (Cf. the observations of James, L. J. in *Ex parte Nicholson*, *In re Willson* (1880) 14 Ch. D. 243, 247). Bankruptcy proceedings are inquisitorial enough. When some other person than the trustee makes the application to summon witnesses for the discovery of the debtor's property, the Court ought to consider whether there is any reasonable probability of the examination resulting in a benefit to the estate, and whether it is reasonable to summon witnesses for examination from any distance. But it is not a conclusive reason for refusing a creditor's application to summon witnesses for examination, that the trustee declines to do so. The trustee stands in the position of *amicus curiæ*; he has no interest in the matter except for the purpose of saying whether he will take it up himself, and therefore, ought not to file affidavits in opposition to the application (*Ibid.*). As to who may be examined about the discovery of debtor's property:

1. A trustee, after serving notice of application on him (*Ex p. Crossley, re Taylor* (1873), L. R., 13 Eq. 409; *Re Whicher, ex p. Stevens* (1888), 5 Morr. 173).
2. A creditor (*Ex p. Austin* (1877) 4 Ch. D. 13).
3. A third party, when the person seeking to interrogate is the official receiver or trustee, even when the latter is bringing an action against the witness, because all that the official receiver does is for the benefit of the estate (*In re Easton, Ex parte Davies* (1891) 8 Morr. 168, 171).

Next as to who may not examine witnesses for the object of discovering the debtor's property:

1. Neither, as a general rule, the bankrupt himself, nor the assignee of the possible surplus of an undischarged bankrupt, can examine an alleged creditor with respect to his claim. It has been judicially considered that it would lead to enormous mischief to confer a right on the bankrupt to interfere with the administration of his estate, or allow him to do anything

to embarrass the administration of his estate (*In re Austin* (1879) 10 Ch. D. 436, per James, L. J.).

2. The Court will not allow even the trustee to examine a stranger under s. 27 of the Bankruptcy Act, when he has commenced an action against him with respect to property alleged to be part of the bankrupt's estate, with the view of obtaining information in relation to the matter in dispute beyond such discovery as can be obtained under the ordinary procedure of the High Court, because a Court of Bankruptcy wishes "to avoid permitting the trustee to have anything like a dress rehearsal of the cross-examination in an action;" (*Ex parte Gittins* [1892] 1 Q. B. 646, 648).

There is, however, a conflict of authorities on the point, and it seems that the trustee in bankruptcy may examine under the above circumstances, if the third party refuses to give reasonable information about the debtor's estate. In practice applications to examine are entertained when proceeding from third parties other than the official receiver or trustee, but applicants of the former kind will bear the costs thereby incurred unless the Court should otherwise direct (*Ex p. Swift* (1872), 26 L. T. 226). A person summoned for examination as to a debtor's property has the protection of only being liable to be summoned on the expression of a Judge's opinion, and cannot be called as a matter of right at the option of the litigant; but he cannot move to discharge an order in bankruptcy for his examination, and has no right of appeal (*In re Gold Company* (1879) 12 Ch. D. 77). Section 27 of the principal Act is extended to compositions or schemes by section 3 (16) of the Bankruptcy Act, 1890.

Next as to what questions the bankrupt or a witness must answer. The depositions of witnesses in bankruptcy proceedings are directed to be taken by section 136, and the bankrupt's depositions are evidence against him, even if criminal proceedings be founded upon it. The bankrupt himself, being under a personal obligation to make a full disclosure of his property, is not protected from being asked questions the answer to which may tend to show that he has concealed his effects, or been guilty of any other offence connected with his bankruptcy (*R. v. Scott* (1856) 25 L. J. M. C. 129; *Ex p. Schofield* (1877) 6 Ch. D. 230). A witness other than the bankrupt is generally required to answer all questions relating to the debtor, his dealings, or property, as e. g. the address of the bankrupt's father (*Ex p. Campbell, re Culhcart* (1870), L. R. 5 Ch. 703) or his own address, even when the witness is a solicitor, except when the bankrupt's address was disclosed to the solicitor as a matter of professional confidence (*Re Arnott, ex p. Official Receiver* (1888) 5 Morr. 286). But a witness, other than the bankrupt, may refuse to answer questions on the ground that his answer would tend to criminate him (*Ex p. Schofield* (1877) 6 Ch. D. 230; *Ex p. Reynolds* (1882) 20 Ch. D. 294; *Ex p. Gilbert* (1886) 3 Morr. 223), and cannot be ordered to furnish an account in writing of money transactions between himself and the bankrupt, or property of the bankrupt received by him (*Ex p. Reynolds* (1882), 21 Ch. D. 601). A debtor is guilty of contempt in saying that he will not answer any question at all, if the trustee applies for the debtor to come and be examined and be tested as to the truth of his evidence, because the trustee thinks that his answers are untrue and evasive (*Ex parte Close* (1877) 5 Ch. D. 145). The powers of the Court of Bankruptcy to order the production of documents have always been and seem still to be very large; ex. gr. a mortgagee from the bankrupt must produce his mortgage (*Re Marks* (1866) L. R. 1 Ch. 429). In *In re Leighton* (1866), L. R. 1 Ch. 331, the meaning of the words "custody" or "power", occurring at the close of the first subsection of section 27, were elucidated. A clerk cannot be said to be in the "possession" of books, in which he has only to make entries, and has nothing to do with them besides. But if debtors abscond, leaving their books in the sole possession of a clerk, it seems that under the bankrupt law, he is liable to produce them, and they will be regarded as in his "custody" or "possession" for the purposes of that law, even when the books are not normally in his custody, and he has no right to remove them from the office. The Court will only order the production of a document when a strong *prima facie* case is made, that it is, or relates to, the property of the bankrupt (*Ex p. Smith* (1882) 45 L. T. 447). Whether the document ought to be produced is a question for the registrar (*Ex p. Tatton* (1881) 17 Ch. D. 512). The bankrupt's solicitor cannot withhold his books from examination on the ground of his lien (*Re Toleman, ex p. Bramble* (1880) 13 Ch. D. 885). It is in the discretion of the Court whether

the trustee, creditors, or the debtor, or persons on their behalf respectively, who have any right to inspect the depositions, may take a copy. As to practice on discovery, a witness, summoned for examination in bankruptcy proceedings, is entitled to conduct money, or travelling expenses, before he comes to Court; and if sufficient conduct money has not been tendered, he cannot be committed for not attending, nor can a warrant issue to compel his attendance (*Re Batson, ex p. Hastie* (1894), 1 Mans. 45; and see B. R. 70, 71.) He is also entitled to ordinary expenses, including loss of time, but is not entitled to the costs of employing a solicitor or counsel (*Ex p. Waddell* (1877), 6 Ch. D. 238), though he is allowed to employ them. As to further and more detailed notices of the subject of the discovery of a debtor's property, cf. Williams on Bankruptcy, pp. 97—102; and Baldwin on Bankruptcy and Bills of Sale, pp. 530—538.

Restriction of rights of creditor under execution or attachment. By section 45 of the principal Act it is provided that:

- “1. Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.
2. For the purposes of this Act, an execution against goods is completed by seizure; an attachment of debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.”

In an authoritative work on bankruptcy law it is observed that “the result of the enactment is that the title of the trustee will prevail over that of an execution creditor, unless the creditor has:

1. Completed the execution or attachment by seizure, and sale or receipt or recovery of the full amount of the levy (*Figg v. Moore* (1894) 2 Q. B. 690), in the case of goods, and by seizure or the appointment of a receiver in the case of land, or by receipt of the debt.
2. Completed it before the date of the receiving order, and before notice of the presentation of any bankruptcy petition, or of the commission of any available act of bankruptcy. If the sheriff has delivered the lands to the execution creditor, the execution is completed, although he has not made a return to the writ (*Re Hobson* (1886), 33 Ch. D. 493). But where part of the debt was paid to the execution creditors, and the sheriff withdrew under an authority to re-enter, and before payment of the balance or re-entry a receiving order was made against the debtor, the trustee was held entitled to the amount paid to the execution creditors (*Re Ford* [1900], 1 K. B. 264). See Williams on Bankruptcy, pp. 251—254; Baldwin on Bankruptcy and Bills of Sale, 489, 508.

Relation back of Trustee's Title. By section 43 of the principal Act it is provided: “The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the date of the debt of the petitioning creditor”. An act of bankruptcy was originally looked upon as a crime, and therefore in theory the title of the assignees dated from the moment when any act of bankruptcy was committed by the trader, however long anterior to the date of the petitioning creditor's debt this might have occurred. It was held, in the earlier cases, that the policy of the earlier Acts on the subject of bankruptcy was remedial, and that their object was to facilitate and give a greater capacity of proving debts on certain terms, and not to abridge it, and that therefore a creditor could prove under a commission of bankruptcy, for a debt contracted before the act of bank-

ruptcy on which the commission issued, but after notice of a prior act of bankruptcy. In another case Lord Eldon declared his opinion to be that the relation to the act of bankruptcy could not be carried back beyond the debt upon which the Commission had proceeded (*Ex p. Birkett* (1814) 2 Rose, 71, 73). When a debtor petitions, according to a principle recognized since 1869, the period of relation runs back to the moment when the bankrupt proves his intention by his actions; but in the case of proceedings *in invitum*, when creditors present a petition, the period only runs back to the completion of the act of bankruptcy; ex. gr. in a case where the act of bankruptcy consists in the payment of a sum of money by the debtor's agent, who has knowledge of its consequences, when the money has left the agent's hands. Payments made pending proceedings, or within the period of relation, can be recovered by the trustee, with the exception only of ready money *bona fide* paid over by a debtor to his solicitor for expenses in opposing the bankruptcy proceedings (*Ex p. Payne* (1885), 15 Q. B. D. 616). This exception is subject to some doubt (see the decision of the Court of Appeal in *Ex p. May* (1890), 7 Morr. 100). Payments made by a debtor's solicitor or agent, by cheque, pending proceedings, on the debtor's behalf can be recovered. In *ex p. Minor* [1893] 1 Q. B. 455, where a debtor committed an act of bankruptcy by executing a deed of assignment for the benefit of creditors, the solicitor who prepared it was held liable to pay over the balance of a sum of ready money he received from the debtor for drawing up the deed. On the effect of relation, Lord Esher, M. R., observed in this case—"The deed of assignment which had been prepared by the solicitor was executed by the debtor; its execution was an act of bankruptcy, and the solicitor knew that it was. The title of the trustee related back to that act of bankruptcy. What does that mean? The result of the relation back is, that all subsequent dealings with the debtor's property must be treated as if the bankruptcy had taken place at the moment the deed was executed. Then he, being a bankrupt, all the money which he then had, and all the money which was owing to him, passed to the trustee in bankruptcy for the purpose of being distributed by him amongst the bankrupt's creditors". A trustee may pay for services rendered which have been useful to creditors, but only when he is clearly satisfied that that is their result, and this limitation must be strictly construed (*ex p. Ball* [1894] 1 Q. B. 433). Money paid to solicitors by the bankrupt for the purpose of defending him on a criminal charge must be refunded to the trustee, when it is paid under an oral agreement (*Ex p. Cooper* (1894), 1 Mans. 56) but is not required to be refunded when paid under a valid agreement under the Solicitors Act, 1870 (*Ex p. Masters* [1894] 1 Q. B. 643). As to other cases on the effect of relation see Williams on Bankruptcy, p. 192—194; Baldwin on Bankruptcy and Bills of Sale, p. 217. The trustee's title did not relate back as against the Crown under the Act of 1869, and it is considered that this will still be so under the Act of 1883 (Williams on Bankruptcy, p. 194).

Description of bankrupt's property divisible amongst his creditors. By section 44 of the principal Act it is provided on this subject that—"The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars: 1. Property held by the bankrupt on trust for any other person; — 2. The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole. But it shall comprise the following particulars:

1. All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and,
2. The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and
3. All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than

debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

Property is defined in section 168 as follows:—"Property includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in England or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property above defined." Generally, it has been held that, according to the scope and spirit of the bankruptcy laws, every beneficial interest which the bankrupt has should be disposed of for the benefit of his creditors. As regards trusts, one of the two heads of a debtor's property which is not divisible amongst his creditors, they may be divided into:

1. Express trusts, including trusts *virtute officii*; in this case not even does the legal interest of the bankrupt pass to the trustee for the creditors (*Carvalho v. Burn* (1832), 4 B. & Ad. 382; *Houghton v. Koenig* (1856), 25 L. J. C. P. 218).
2. Trusts created by the bankrupt. In this case unless the bankrupt is only a bare trustee, the legal estate passes to the trustee in bankruptcy, as the bankrupt has a beneficial interest in the trust property (*Parnham v. Hurst* (1841), 8 M. & W. 743; *Castelli v. Boddington* (1852), 1 E. & B. 66).

The trend of the decisions appears to be that trusts of this kind are not available against the trustee in bankruptcy, but very difficult questions of law arise on this point in the case of what are called specific appropriations. Specific appropriations may be created of property either:

1. In the hands of the person in whose favour the trust or appropriation has been made, or
2. In the hands of an agent of the bankrupt, or
3. In the hands of the bankrupt himself.

The first of these cases seems not to differ materially from a case of specific lien. In the second case it must be supposed

1. That the goods appropriated are in the hands of an agent of the bankrupt, or
2. There is a debt, or something in the nature of a debt, due to the bankrupt.

Whether appropriations of this kind are irrevocable and valid against the trustee, depends on the question whether there has been an assignment in equity. A contract to appropriate operates forthwith as an assignment in equity, and confers on the appropriatee a perfect title against the trustee in bankruptcy, unless it is in fraud of the bankruptcy laws, without any notice to the agent or debtor or trustee for the bankrupt (*Rodick v. Gandell* (1852), 1 De G. M. & G. 763; *Burn v. Carvalho* (1839), 4 Myl. & Cr. 690; *Alexander v. Steinhardt*, [1903] 2 K. B. 208). As to what constitutes a contract for specific appropriation as distinguished from a representation of the bankrupt's means of paying, see *The Citizen's Bank of Louisiana v. The Bank of New Orleans* (1873), L. R. 6 H. L. 352, 365. The subject matter of the assignment must be specified by the bankrupt, in order to constitute an assignment in equity (*Fisher v. Miller* (1822), 1 Bing. 150; *Gibson v. Minel* (1824), 2 Bing. 7). When the appropriation is not in pursuance of an antecedent contract, notice to the agent, debtor or trustee of the bankrupt is necessary to perfect the equitable assignment, when the subject matter is something falling within the scope of the reputed ownership section. A good equitable assignment is irrevocable and confers a valid title on the assignee as against the trustee in bankruptcy. A covenant of which specific performance can be obtained is irrevocable and gives a perfect title against the trustee in bankruptcy, the covenant not being ancillary to a debt which was released by the bankruptcy (Per Cozens-Hardy, L. J., in *ex p. Clough* [1904] 2 K. B. 769). Mere licences to seize, or promises to pay when the debtor receives a debt due to him from a third person, are revocable, and do not amount to equitable assignments (*Field v. Megaw* (1869), L. R. 4 C. P. 660). A cheque is not an equitable assignment of the drawer's balance at his bankers, because the authority of the banker is revocable by the drawer (*Hopkinson v. Foster* (1875), L. R. 19 Eq. 74).

Specific appropriations of goods in the hands of the bankrupt himself operate only as equitable assignments when:

1. If in writing, they are registered as bills of sale.
2. The goods are specified, either by the contract, or by some overt act.
3. The appropriation is communicated to the assignee.

Owing to the principle of the Court of Bankruptcy, that the joint estate must be primarily appropriated to meet the joint liabilities, and the separate estate must be appropriated to meet the separate liabilities, there has been introduced an exception to another above mentioned rule, that, in order to constitute an equitable assignment, there must be privity between the assignor and assignee, either by contract or by estoppel. This exception arises under the rule in the well known case of *Ex p. Waring* (1816), 19 Ves. 345, where it was held that bill-holders, though in no way privy to or cognizant of the appropriation of funds specifically appropriated to meet the bills as between drawer and acceptor, who become bankrupt, are entitled to enforce the appropriation, not on account of any equity in themselves, but of the necessities connected with the administration of two insolvent estates, and the equities as between the insolvent drawer and the insolvent acceptor. The rule in *Ex p. Waring* is subject to certain limitations, and in practice has been confined to the case of holders of bills of exchange, and it seems quite possible that its application is limited to cases where the security is sufficient, as otherwise the estate of the bankrupt acceptor may lose some part of the indemnity to which, by the contract, he is entitled (For a discussion of the rule in *Ex p. Waring* and the cases see Williams on Bankruptcy; pp. 204—206). When the bankrupt has only a special property vested in him as factor, etc. the goods or their proceeds, so long as they remain distinguishable from the mass of the bankrupt's property, will not pass to the trustee of the creditors. Bills remitted to a banker by a customer for a particular purpose do not pass on the bankruptcy of the banker to the trustee in bankruptcy (*Parke v. Eliason* (1801), 1 East, 544; *Thompson v. Giles* (1825), 2 B. & C. 422). Bankers are agents of bills to receive payment of them when due, and therefore short bills do not pass to the trustee on the bankruptcy of the bankers. It is a question of fact in cases of this kind whether the price of the bill is an immediate debt due to the customer from the banker upon the receipt of the debt; if so, the trustee is entitled to hold the bills as against the customer (*Thompson v. Giles* (1824) 2 B. & C. 422). Money paid to a banker for a specific purpose vests in the banker's trustee in bankruptcy before it is allocated (*Ex p. Massey* (1870), 39 L. J. Ch. 635). By the rules of the Stock Exchange, the official assignee of a defaulter is the agent for members who are owed differences by the defaulter as regards moneys arising from differences owing to the defaulter from other members, and the trustee of a bankrupt stockbroker or jobber has no claim to the fund created under the rules of the Stock Exchange (*Ex p. Grant, re Plumby* (1880), 13 Ch. D. 667; *Re Woodd* (1900), 82 L. T. 504). The rules of the Stock Exchange operate to effect an assignment of all the assets of a defaulting member, and are valid against all persons (*Lomas v. Graves* [1904] 2 K. B. 507, following *Richardson v. Stormont* [1900] 1 Q. B.), but the assignment is an act of bankruptcy (*Tomkins v. Saffery* (1878), 3 App. Cas. 213, *Ponsford v. Union of London and Smith's Bank* [1906] 2 Ch. 444 at p. 450) and may, therefore, be defeated if bankruptcy ensues on a petition presented within three months from its date. The proceedings in the Stock Exchange liquidation are not an accord and satisfaction, and if there is a surplus after payment of the Stock Exchange creditors, this will form part of the general assets of the bankrupt and belong to the trustee.

The allowance of interest by the remittee to the remitter on the amount of the remittances conclusively determines negatively any presumption that specific appropriation is intended, as the remittee then is a mere debtor of the remitter. Bankers have a general lien on all securities in their hands for their general balance, unless there be evidence to show that any particular security was received under special circumstances, which would take it out of the common rule. There is no specific appropriation of goods which have not been paid for in favour of the vendor, even when the goods remain in specie at the date of the vendee's bankruptcy (*Ex p. Whittaker*, (1875) L. R. 10 Ch. 446), unless they have been forwarded by mistake (*Ex p. Barnett*, (1876) 3 Ch. D. 123), when the trustee of the supposed vendee must restore the goods or pay the amount due for them. No property passes in a chattel detained, and therefore the trustee of a bankrupt who is an unsuccessful defendant in an action of detinue will be ordered to deliver up the chattel to the plaintiff (*Ex p. Drake*, (1877) 5 Ch. D. 866). There is specific appropriation of property deposited with the bankrupt for a specific purpose, and such property can be recovered by the appropriator from the appropriatee's trustee when that purpose fails (*Edwards v. Glyn*, (1859) 28 L. J. Q. B. 350).

Equities; Duty of Trustee. "The law of England is that, with certain exceptions, the trustee in bankruptcy is bound by all the equities which affect a bankrupt; that is to say, if a bankrupt, under circumstances which are not impeachable under any particular provision connected with his bankruptcy, enters into a contract with respect to his real estate for a valuable consideration, that contract binds his trustee in bankruptcy as much it binds himself. . . . The trustee stands in exactly the same position as the bankrupt himself stands in, and therefore his trustee is bound to perform the contract in exactly the same way as he himself was bound to perform it:" (Per James, L. J., in *Ex p. Holthausen*, (1874) L. R., 9 Ch. 722). Equities of a somewhat analogous character to trusts affecting the property while in the hands of the bankrupt arise in favour of third persons who have rendered him assistance since the date to which the title of the trustee relates by paying off a distress for rent (*Ex p. Elliott*, (1838) 3 M. & A. 664) or who have paid moneys to the bankrupt's wife in ignorance of the fact that it was in reality due to him (*Re Montagu*, (1897) 4 Mans. 1). See on this subject; Williams on Bankruptcy, pp. 210—212; Baldwin on Bankruptcy and Bills of Sale; p. 288.

Generally a trustee in bankruptcy as officer of the Court will be ordered to do the fullest equity, ex. gr. he will be ordered to refund money paid under a mistake of law, though the ordinary rule is that money so paid cannot be recovered (*Ex p. Simmonds*, (1886) 16 Q. B. D. 308). The trustee may be ordered to refund even in a case where the person who is recouped has no legal and probably no equitable right, ex. gr. to refund to the wife of a deceased bankrupt premiums paid by her at the husband's request on a policy of insurance on his life accruing after the date of his bankruptcy. The refunding of money by the trustee in such cases rests on a moral principle, and may be effected although the equities which require the money to be refunded are incapable of forensic enforcement in a suit or action, because "the Court of Bankruptcy ought to be as honest as other people:" (Per Bigham, J., in *Re Tyler*, [1907] 1 K. B. 865). But it must be the act or omission of the trustee that is the ground of money being so refunded in bankruptcy, and when money has been paid under a mistake in law to some creditors of the bankrupt on his behalf by persons with whom the officer has nothing to do he will not be ordered to refund it (*Re Hall*, [1907] 1 K. B. 875). It has been noticed that by virtue of s. 44 of the Bankruptcy Act, 1883, the debtor's tools of his trade etc. to the value of £20 are excepted from the category of the property of a bankrupt which is divisible amongst his creditors, but by s. 8 of the Small Debts Act, 1845, the debtor's tools of trade etc., are only excepted to the value of £5. "It is a curious and anomalous result" of the joint effect of these two enactments that if the tools are not sold the bankrupt is entitled to them up to the amount of £20 under s. 44 of the Bankruptcy Act, 1883; but before bankruptcy the sheriff is bound to go on with execution and sell, unless bankruptcy supervenes and he is stopped by a request for the goods from the official receiver; and if he sells he must hand over the proceeds to the official receiver, and the debtor in this case has only a right to tools etc. of the value of £5, and cannot claim for the balance up to £20 out of the proceeds (*In re Dawson*, [1899] 2 Q. B. 54.) Copyhold and customary property seems included in the definition of property (s. 168) and vests in the bankrupt's trustee or his appointee. Contingent interests pass to the trustee in bankruptcy (see the judgment of Turner, L. J., in *Re Fizard's Trusts*, (1866) L. R. 1 Ch. 588), unless it is a mere possibility of an interest. Where the bankrupt has no inchoate or transmissible interest till after his discharge, the property will not pass to the trustee (*Gibbins v. Eyden*, (1868) L. R. 7 Eq. 371).

There are several exceptions to the general rule that all a bankrupt's property vests in the trustee; and sometimes property which would have vested in the bankrupt, had he remained solvent, will not vest upon his bankruptcy in the trustee, or will not vest in him so beneficially. This results from some one or other of the following causes:

1. The operation of bankruptcy as a condition subsequent defeating the bankrupt's interest.
2. The operation of bankruptcy quâ insolvency in qualifying the contractual rights which the bankrupt, as a solvent man, possessed.
3. The personal nature of the right vested in the bankrupt.
4. The express exceptions created by sections of the Bankruptcy Act.

5. Grounds based on the general policy of the law. See on this subject: Williams on Bankruptcy, pp. 215—221; Baldwin on Bankruptcy 312—319; The Laws of England Vol. 2, p. 146.

When rights of action vest in the trustee. The following is a reference to the rules that may be deduced from the cases on this subject:

1. Rights of action in respect of torts, resulting immediately in injuries wholly to the person or feelings of the bankrupt, do not pass to the trustee for his creditors, even though the estate of the bankrupt may thereby have been consequentially injured (*Stanton v. Collier*, (1854) 23 L. J. Q. B. 116, per Wightman, J.).
2. Rights of action in respect of breaches of contract, resulting immediately in injury wholly to the feelings of the bankrupt, e. g., a contract to marry, do not pass to the trustee for the creditors, even though the estate of the bankrupt may thereby have been consequentially damaged (*Beckham v. Drake*, (1849) 2 H. L. C. 579).
3. A right of action, whether in respect of torts or of breaches of contract, resulting primarily and immediately in injuries both to the estate and also to the person of the bankrupt, will, it would seem from the observations of the judges in their opinions in the House of Lords (in *Beckham v. Drake*), be split, and pass, so far as they relate to the estate, to the trustee, and remain, so far as they relate to the person and feelings of the bankrupt in him. (See *Beckham v. Drake*, at pp. 629, 634, per Wilde, C. J., and per Parke, B., also compare the dicta in *Knight v. Quarles*, (1820) 2 B. & B. 102, 104, and *Alton v. Midland Railway Co.*, (1865) 34 L. J. C. P. 292, as to rights of action for injuries to the estate consequential upon personal injuries passing to the executor, and the remarks of Bramwell, B., in *Hodgson v. Sidney*, (1866) L. R. 1 Ex. 313; see also *Castelli v. Boddington*, (1852) 1 E. & B. 66).
4. The right of action for a breach of contract, even if it relates to the personal labour of the bankrupt, will vest in the trustee, if there was such a breach as to vest a right of action in the bankrupt before his bankruptcy (*Beckham v. Drake* (1849), 2 H. L. 579); but if the contract is unexecuted at the date of the bankruptcy, and the breach occurs after bankruptcy, the right of action will not vest in the trustee, but remain in the bankrupt, who can sue in respect of it (*Bailey v. Thurston* [1903] 1 K. B. 137).

With regard to equitable choses in action, a trustee in bankruptcy is in no better position than any other assignee, and must therefore give notice or obtain a stop order. A bankrupt who has not obtained his discharge cannot, except in the case of after-acquired property where the trustee has not interfered, or where the right of action does not vest in the trustee, bring an action or suit in equity; and this although the bill charges fraud against all the defendants, including among them the trustee (*Motion v. Moojen* (1872), L. R. 14 Eq. 202; *Payne v. Dicker* (1871) 24 L. T. 492). The separate property of a married woman, as for instance a life estate settled upon her for her separate use without any restraint on anticipation, will pass on her bankruptcy to the trustee (*Re Armstrong*, (1888), 21 Q. B. D. 264). And even where there is a restraint on anticipation the property vests subject to the restraint, and upon the death of her husband in her lifetime, becomes available for her creditors, the restraint on anticipation being in the nature of an incumbrance which is removed by the husband's death (*Re Wheeler's Settlement Trusts* [1899], 2 Ch. 717). Property which has been the subject of a voluntary conveyance or a fraudulent preference which the bankrupt is legally divested of, will vest in his trustee in bankruptcy. A trustee cannot avoid a transaction of which he has taken the benefit: thus, he cannot, having received the proceeds of a sale, afterwards treat that sale as tortious and sue the seller in trover (*Smith v. Hodson*, 2 Sm. L. C. 11th Ed. 146; *Brewer v. Sparrow* (1827), 7 B. & C. 310).

It follows, both from the general principles of private international law, and from the express terms of the principal Act (s. 168), that the personal estate of the bankrupt, wherever situate, passes to the trustee in bankruptcy. Real property is governed everywhere by the *lex loci rei sitae*, and therefore the provision in the principal Act which vests real property wherever situate in the bankrupt's trustee, will probably be of little or no practical effect, since the order of adjudication will not, it is presumed, be recognized in foreign countries as operating to transfer to

the trustee real property there situate (see Story on the Conflict of Laws, s. 428; Wheaton's Int. Law, 8th ed. 219; and Williams on Bankruptcy, p. 230).

In order that property may come under the provision as to reputed ownership and pass to the trustee the following conditions must be satisfied:

1. The bankrupt must be carrying on a trade or business; this does not include farmers (*Re Ginger*, [1897] 2 Q. B. 461).
2. The property must be personal chattels or choses in possession; and does not extend to choses in action (except trade or business debts), interests in land, fixtures, or mortgages.
3. The goods must be in possession or order or disposition at the commencement of (not after) his bankruptcy.
4. They must be used for business purposes with the consent of the true owner.

A trustee is the true owner and the reputed ownership clause has no application where beneficiaries are in the possession of goods in accordance with the trust. Property left for safe custody is not within the reputed ownership clause. The possession of bills of lading, dock warrants or orders for delivery, is generally sufficient to exclude the reputed ownership clause. (Cf. Williams on Bankruptcy; pp. 231—251; Laws of Engl. Vol. 2; pp. 173—181.)

Disclaimer of onerous property. By section 55 of the Bankruptcy Act, 1883, the trustee may, within twelve months of his appointment, or within twelve months of his becoming aware of its existence, disclaim in writing signed by himself, property of the following kinds:

1. Land of any tenure burdened with onerous covenants.
2. Shares or stock in companies.
3. Unprofitable contracts.
4. Unsaleable property, or property that is not readily saleable, by reason of the possessor being bound to the performance of any onerous act, or to the payment of any sum of money.

If the trustee elects to disclaim within twelve months, he may do so though he has endeavoured to sell or to take possession of the property. The effect of disclaimer is to discharge the trustee from all liability in respect of such property. Generally a trustee cannot disclaim a lease without the leave of the Court, but may do so on certain conditions defined by the Bankruptcy Rules (Rule 120). Where leave is not required, no terms can be imposed (*Re Sandwell* (1885), 14 Q. B. D. 960). A disclaimer after application by a person interested must be made within twenty-eight days by the trustee. The Court may make an order rescinding a contract disclaimed by the trustee, but giving damages. Property disclaimed by the trustee may be vested conditionally in any person claiming it, by order of the Court. (Williams on Bankruptcy, pp. 286—299; Laws of England Vol. 2, ss. 307, 313; Baldwin on Bankruptcy and Bills of Sale, pp. 321—340.)

Proof of Debts. By the Bankruptcy Act, 1883, s. 37, three classes of debts or liabilities are not provable in bankruptcy (or under a composition or scheme of arrangement: Bankruptcy Act, 1890, s. 3 (17) viz:

1. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust.
2. Debts or liabilities contracted by the debtor with any person after that person had notice of an available act of bankruptcy. That is to say, a creditor cannot prove under a receiving order in respect of any debt contracted after he knew that the debtor had committed an act of bankruptcy, which was then available as a ground for that particular order. And where a debt so contracted is "provable" within subs. 3,—though the creditor, by reason of the notice, is under a personal incapacity for proving, the creditor cannot afterwards recover the debt in an action (*Buckwell v. Norman*, [1898] 1 Q. B. 622).
3. Contingent debts or liabilities, the value of which cannot in the opinion of the Court be fairly estimated.

Besides the above there are certain other debts which are not provable by the general policy of the law, as for instance, gambling debts (Gaming Acts, 1845 and 1892); debts founded on fraud or on an illegal consideration (*Collins v. Blantern*, (1767) 2 Wils. 341); debts barred by the Statutes of Limitations; nor will proof be allowed on an unstamped bill or note (Stamp Act, 1891); debts contracted by an infant during his minority (except debts for necessaries and liquidated damages

for torts (*Peters v. Fleming*, (1840) 9 L. J. Ex. 81; *Burnand v. Haggis*, (1863) 32 L. J. C. P. 189) cannot be proved against his estate if he becomes bankrupt after attaining his majority, even although he may have ratified such debts after coming of age (37 & 38 Vict. c. 62): but it was held in *re King* (1858), 3 De G. & J., 63, that when an infant had obtained a loan on a fraudulent representation that he was of age, a proof was properly admitted in bankruptcy.

Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject before his discharge by reason of any obligation incurred before the date of the receiving order, are deemed to be debts provable in bankruptcy. An estimate must be made by the trustee of the value of any debt or liability, provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value. Any person aggrieved by any estimate made by the trustee may appeal to the Court. If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability, for the purposes of the Act (Bankruptcy Act, 1883) is deemed to be a debt not provable in bankruptcy. If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed is deemed to be a debt provable in bankruptcy. "Liability" for the purposes of the Act includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it includes any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money, or money's worth, whether the payment, as respects amounts is fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation is capable of being ascertained by fixed rules, or as matter of opinion.

Thus it will be seen that the word "liability" as defined by s. 37 (8) of the Act has a very wide signification. In *Hardy v. Fothergill*, (1888), 13 App. Cas. 351, it was held that the assignee of a lease was released by an order of discharge from his liability under a covenant to indemnify the lessees for a breach of their covenants to repair and yield up in repair the premises at the end of the term. The section seems to include all liabilities which can be fairly estimated, excluding those specially excepted. Thus a surety who has not actually paid the debt for which he is contingently liable would, it seems, be entitled to prove in respect of such liability (*In re Herepath* (1890), 38 W. R. 752; *In re Paine*, [1897] 1 Q. B. 122) and the liability of a co-surety to contribution, though unascertained at the time of his bankruptcy, appears also to be provable (*Wolmershausen v. Gullick* [1893], 2 Ch. 514); a successful defendant's costs, though untaxed, are provable, provided a verdict has been obtained before the receiving order (*Ex p. Peacock* (1873), L. R. 8 Ch. 682; *In re Bluck* (1888) 57 L. T. 419). Damages in tort are only provable where judgment is signed before the date of the receiving order (*In re Newman* (1876) 3 Ch. D. 494). The chance of a widow marrying again is one which may be estimated (*In re Blakemore* (1877) 5 Ch. D. 372) or of a separated wife remaining chaste (*In re Batey* (1880), 14 Ch. D. 579). But future periodical payments of alimony ordered to be paid by a husband to his wife have been held not capable of valuation, and are therefore not provable under the husband's bankruptcy (*Linton v. Linton* (1884), 15 Q. B. D. 239), even to the amount which has become ascertained at the time of proof (*In re Hawkins* [1894] 1 Q. B. 25). The value of an annuity payable to a person for life is capable of being estimated for proof (*ex p. Naden* (1874), L. R. 9 Ch. 670) and so is the value of an annuity payable to a woman during her life, but defeasible in the event of her marrying again (*In re Blakemore*, supra). Where an annuity is to be proved, the Act converts the annuity for the purposes of proof into a gross sum immediately payable (*In re Parnell* (1879), 11 Ch. D. 914).

A judgment is *prima facie* evidence of a debt and proof may be made in respect of it, but the Court may go behind it to see whether the debt is a real one or obtained by fraud or collusion (*In re Onslow* (1874), L. R. 10 Ch. 373). Every debtor

must prove promptly. The mode of proving a debt is by delivering or sending through the post in a prepaid letter to the official receiver or to the trustee, if one has been appointed, an affidavit verifying the debt (Bankruptcy Act, 2nd Schedule r. 2). The affidavit must be by the creditor himself or some person authorized by him. It must refer to a statement of account shewing particulars of the debt, and specify vouchers. It must also state whether the creditor is secured or not. The cost of proving the debt must be borne by the creditor (Bankruptcy Act, Schedule II, r. 6).

The trustee is required to examine every proof and admit or reject it in whole or part. If he rejects it, he must state in writing to the creditor the grounds of the rejection (Bankruptcy Act, 2nd Schedule, r. 22). The creditor may apply to the Court if he is dissatisfied (Bankruptcy Act, 2nd Schedule, r. 24). A proof may be withdrawn before it has been adjudicated upon (*In re Rhoades* [1899] 1 Q. B. 905; [1899] 2 Q. B. 347), but a conditional withdrawal of a proof, pending an appeal against it, will not be allowed: (*In re Clark* [1901], 1 Q. B. 655).

Set-off. If a creditor who seeks to prove is himself indebted to the bankrupt, it would be manifestly unfair to make him pay his debt in full and allow him to receive only a dividend on the amount due to him. Accordingly s. 38 enacts that, "where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively".

The cross claims, which are the subject of settlement under this section, need not be of the same kind. Thus a secured debt can be set off against one that is not secured, a debt on a bond against a debt on a simple contract; a claim for unliquidated damages under a contract against a liquidated sum; a cash balance against an outstanding acceptance, and so on.

But, in order that they may be set off under this section, "the mutual credits, mutual debts, or other mutual dealings", must be between the same parties. Therefore, a joint debt cannot be set off against a separate debt, or a debt due from three partners against a debt due to two. Nor can a debt due to or from one party in his own right, be set off against a debt due to or from the other as an executor or trustee. A surety who pays off the debts of his principal after the latter has become bankrupt, has a right to stand in the creditor's place, and may set off any securities held by such creditor against a claim by the trustee.

The line of set-off is, as a rule, to be drawn at the date of the receiving order, but it may be drawn at an earlier date where the party who has dealt with the bankrupt had notice of an available act of bankruptcy (*In re Daintry, ex p. Mant* [1900] 1 Q. B. 546; Cf. *Elliott v. Turquand* (1882), 7 App. Cas. 39; *In re Gillespie* (1885) 2 Mor. 100).

Section 38 goes on to say that "a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy, committed by the debtor, and available against him". This is obviously just, for a person who chooses to give credit to a debtor with the knowledge that the latter has committed an available act of bankruptcy, disentitles himself by such imprudence from diminishing the fund available for meritorious creditors by setting off his claim against that of the debtor's.

Interest. Where a creditor has proved for a debt bearing interest at a rate exceeding 5 per cent. per annum, the interest can be calculated at 5 per cent. per annum only for the purposes of dividend, and he can only receive the higher rate of interest after all debts proved have been paid in full. (Cf. the remarks of Lindley, L. J. as to proper course to pursue as to interest in bankruptcy proceedings in *Re Browne* [1891] 2 Q. B. 574; referred to in Williams on Bankruptcy, p. 142; Bankruptcy Act, 1890 s. 23. Compare *Re Holland* (1894), 1 Mans. 508; *Re Nepean* [1903] 1 K. B. 794; Laws of England Vol. 2. p. 224, 232). When interest is not agreed or reserved, proof may be made for interest up to 4 per cent. per annum to the date of the receiving order on any provable debt or sum certain payable at a certain time or otherwise. (Baldwin on Bankruptcy and Bills of Sale, pp. 141, 589, 592, 649, 650, 651, 652, 655, 665 etc.)

Part X. Annulment of Adjudication — Costs — Small Bankruptcies — Punishment of Fraudulent Debtors.

Annulment of Adjudication Order. An adjudication order may be annulled:

1. Where it ought never to have been made; as to instances see *Ex p. Helsby* (1893) 1 Mans. 12, where an adjudication order was made against a married woman who was not trading separately from her husband.
2. Where the Court is satisfied that the debts have been paid in full; cf. Bankruptcy Act, 1883 s. 36 by which it is provided that, "For the purposes of this part of this Act any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court". Where a friend of the bankrupt bought up all the debts for less than two shillings in the pound, and then assigned them at their full value to a third person on the bankrupt's behalf, it was held that the debts had not been paid in full, and the bankruptcy could not be annulled (*Re Burnett* (1894) 1 Mans. 89); finally
3. An adjudication order may be annulled where a composition or scheme has been accepted and approved under the Bankruptcy Acts (Williams on Bankruptcy, p. 123; Laws of England Vol. 2. p. 90; Baldwin on Bankruptcy and Bills of Sale, p. 674).

Costs. Much of this subject has received an anticipated treatment in the foregoing pages. As to costs generally, see Bankruptcy Rules, 108—128; Bankruptcy Act, 1883, s. 73. In the absence of any express direction, the costs of an opposed motion in bankruptcy follow the event, and are taxed between party and party, but generally the costs of and incidental to any proceeding in Court are in the discretion of the Court and are taxed as between party and party. But it has been decided in the Court of Appeal, upon the construction of s. 105 (1) of the Bankruptcy Act, which provides that the costs of bankruptcy proceedings shall be in the discretion of the Court, that the Court has no jurisdiction to order a debtor to pay any part of the petitioning creditor's costs of an unsuccessful bankruptcy petition (*In re A Debtor* [1910] 1 K. B. 313). The express direction must be given when the costs are awarded (*Ex parte Shoolbred* (1884), 14 Q. B. D. 298). Without a special order costs are not given against an official receiver or trustee in actions against them as representing the estate (R. 108 (3)). It is not the rule in bankruptcy that a solicitor must pay the costs of taxation if more than one-sixth is taxed off his bill (*Ex parte Marsh* (1885), 15 Q. B. D. 340). Different scales of solicitor's costs varying with the estimated amount of the assets of the debtor are prescribed by the Bankruptcy Rules (112, 112 A, 112 B; Appendix, Part II). Except in the case of the charges of the solicitor for the petitioning creditor, if the estimated assets of the debtor do not exceed £300, only three-fifths of the ordinary charges, disbursements being added, will be allowed in all proceedings in which costs are payable out of the estate; and if the assets are found not to exceed £300, but costs on the ordinary scale have been allowed, the excess will be disallowed, and, if paid, must be repaid. An application for costs must be made at the proper time, i. e. the time of the proceeding, otherwise notice of a subsequent application must be served on the official receiver and trustee; and the Court will not allow the party applying for costs under such circumstances the costs of the application unless it could not have been made at the time of the proceeding (R. 123). It is doubtful if a county court judge can review a taxation of a sheriff's costs (*Ex p. Conder* (1887), 20 Q. B. D. 40). The Board of Trade may require taxation when it is the case of the costs of a solicitor employed by the official receiver or trustee, but not of the costs of strangers who have been in litigation with the trustee. (See on this subject, Williams on Bankruptcy, p. 318; for the Rules, p. 462; for the Scale of Solicitor's Costs, p. 632. Laws of England, Vol. 2, p. 105. Baldwin on Bankruptcy; p. 1236.)

Small Bankruptcies. No application for a jury will be entertained in a small bankruptcy (Rule 273, par. a) though when the facts are disputed in other cases in bankruptcy a jury ought to be called in. The official receiver acts as trustee in such cases: cf. on this subject s. 121 of the Bankruptcy Act, 1883; Williams on

Bankruptcy; p. 368. Laws of England, Vol. 2, p. 294; Baldwin on Bankruptcy and Bills of Sale, 719, 720, 721 *et seq.*

Punishment of Fraudulent Debtors. Cf. on this subject; The Debtors Act, 1869, s. 11, 12, 13. The Bankruptcy Act, 1883, s. 31; Williams on Bankruptcy, 399; Archbold's Criminal Pleading, Evidence and Practice, pp. 247, 1138, 1139, 1140, 1146 *etc.*; Baldwin on Bankruptcy and Bills of Sale; p. 570 *et seq.* It is felony for any bankrupt, or person against whom a receiving order has been made, after the presentation of a bankruptcy petition by or against him or within four months before such presentation to leave, or attempt or prepare to leave, England and take with him any of his property to the value of twenty pounds which ought by law to be divided among his creditors, unless the jury is satisfied that he had no intent to defraud; the maximum punishment for the above offences is two years' imprisonment with or without hard labour (s. 12 of the Debtors Act, 1869). By section 11 some sixteen offences by fraudulent debtors are prohibited, all of which are misdemeanours, punishable by a maximum punishment of two years' imprisonment, with or without hard labour. By s. 31 of the Bankruptcy Act, 1883, it is a misdemeanour for an undischarged bankrupt to obtain credit to the extent of £20 without disclosing the fact that he has not obtained his discharge. On an indictment under this provision, it has been held that it is not necessary to prove an intent to defraud (*R. v. Dyson* [1894] 2 Q. B. 176). But under s. 13 of the Debtors Act, 1869, which deals with matters of a somewhat similar kind, there are three elements which have to be considered in the construction of the statute; first, there must be the incurring of a debt or liability; secondly, there must be an obtaining of credit; and thirdly, there must be fraud; the conjunction of the three ingredients makes the offence (*R. v. Jones* [1898] C. C. C. 87, 90). It is almost impossible to conceive how a man could obtain goods from another by false pretences without there being an intent to defraud, but intent must be proved under s. 13 of the Debtors Act, 1869 (*Muirhead*, (1908), 1 C. A. R. 187; *Brownlow* (1910), 4 C. A. R. 131).

Part XI. Deeds of Arrangement.

The desire to evade the stringent provisions of the Bankruptcy Act, 1883, caused a considerable increase in private deeds of arrangement. It was obviously most undesirable that a man should be allowed to enter into a secret deed of arrangement with his creditors, continue in business, and incur fresh liabilities to new creditors who possessed no means of ascertaining the true state of affairs. It was at one time proposed to remedy this "mischief" by making all such attempts to arrange with creditors outside the Act (i. e. Bankruptcy Act, 1883) void, but the panacea of registration was decided on and carried into effect by the Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57).

Arrangements with creditors outside the Bankruptcy Act, 1883, have generally been found to work well. Creditors in the majority of cases receive speedy dividends, and debtors avoid the stigma of proceedings in the Bankruptcy Court.

The Deeds of Arrangement Act, 1887, materially affects all arrangements by debtors with their creditors outside the Bankruptcy Court. This Act is drawn upon the lines of the Bills of Sale Act, 1878, and applies to every deed of arrangement whether under seal or not, made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally (otherwise than in pursuance of the law for the time being in force relating to bankruptcy), that is to say:

1. An assignment of property.
2. A deed of or agreement for a composition.
3. A deed of inspectorship entered into for the purpose of carrying on or winding up a business.
4. A letter of licence authorising the debtor or any other person to manage, carry on, realise, or dispose of a business, with a view to the payment of debts; and
5. Any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business with a view to the payment of his debts. (The words "creditors generally", are by s. 19 to include "all creditors who may assent to or take the benefit of a deed of arrangement".)

The essence of a composition arrangement between a debtor and his creditors is equality between the creditors, and any assenting creditor who afterwards discovers that other creditors have been induced to assent by means of a secret bargain for a payment to them in excess of the composition is entitled to repudiate the arrangement (*Ex p. Milner*, (1885) 15 Q. B. D. 605; *Knight v. Hunt*, (1828) 5 Bing. 432).

Where a deed is liable to be set aside as an act of bankruptcy the trustee should not part with the assets for three months from the date of the deed.

A deed of arrangement is void unless registered within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of England or Ireland respectively, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in England or Ireland respectively, if posted within one week after the execution thereof, and unless the same bears such ordinary and ad valorem stamp as is under the Act provided.

The registration of a deed of arrangement under the Act must be effected in the following manner:

1. A true copy (which does not mean an exact copy: per Bacon, C. J. in *Re Hewer*, (1882) 51 L. J. Ch. 905) of the deed, and of every schedule or inventory, thereto annexed, or therein referred to, must be presented to and filed with the registrar within seven clear days after the execution of the deed (in like manner as a bill of sale given by way of security for the payment of money is required to be filed), together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors.
2. No deed may be registered under the Act unless the original of such deed, duly stamped with the proper inland revenue duty, and in addition to such duty a stamp denoting a duty computed at the rate of one shilling for every £100 or fraction of £100 of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, is produced to the registrar at the time of such registration.

The deed need not contain the names of the assenting creditors, nor is actual execution or signature by the creditors necessary; mere assent will be sufficient; but both the debtor and the trustee are required to execute the same before registration (Deeds of Arrangements Rule, 5 a). The execution of the deed after registration by some of the creditors does not amount to an alteration of the deed so as to avoid it or vitiate the registration (*Re Milne*, (1889) 22 Q. B. D. 685).

A deed of arrangement is an act of bankruptcy and any creditor who dissents from it may present a petition founded on the deed. The petition must, however, be presented within three months, and if no petition is presented within that period the deed is good.

As regards the affidavit to be filed it must be noticed that one is required to be made by the debtor himself, stating the total estimated amount of his property and liabilities under the deed, the total amount of compensation (if any) and the names and addresses of his creditors, and another by the person witnessing the execution, verifying the time of execution, the residence and occupation of the debtor and of the place or places where his business is carried on.

The registrar of Bills of Sale in England and Ireland respectively is the registrar for the purposes of the Act.

Bankruptcy Law of Scotland.

Statutes. 1621 — Act against Unlawful Dispositions and Alienations by Dyvours (devoir; Fr. débiteur) and Bankrupts — 1621, c. 18. — 1696 — Act for declaring Notour (Lat. notus) Bankrupt — 1696, c. 5. — 1856 — Bankruptcy (Scotland) Act — 19 & 20 Vict. c. 79. — 1857 — Bankruptcy and Real Securities (Scotland) Act — 20 & 21 Vict. c. 19. — 1860 — Bankruptcy Amendment Act — 23 & 24

Vict. c. 33. — 1875 — Bankruptcy Amendment Act — 38 & 39 Vict. c. 26. — 1879 — Conveyancing (Scotland) Act 1874 Amendment Act 1879 — 42 & 43 Vict. c. 40. — 1881 — Debtors (Scotland) Act, 1881, — 44 & 45 Vict. c. 22. — 1883 — Bankruptcy Act — 46 & 47 Vict. c. 52. — 1884 — Bankruptcy Fraud and Disabilities Act, 47 & 48 Vict. c. 16.

History. — By the Common Law of Scotland (Ersk. B. I, tit. 1, s. 28; Kaime's Princ. of Equity) no provision was made for distributing an insolvent's moveable and heritable estate amongst his creditors, or for relieving an honest insolvent from the load of his liabilities, without payment in full. As regards the debtor, the common law process of *cessio bonorum* enabled an honest insolvent to escape imprisonment, though he continued liable for the payment of his debts in full. (On the subject of *Cessio Bonorum*, See Stair, B. IV, tit. 52, s. 17; More's Notes, 384; Ersk. B. IV, tit. 3, s. 26; Bell's Comm. 11, 470; Bell's Prin. s. 2321; Mackay's Prac. 1, 80; M. Glashan's Sher. Court Practice s. 263, 2252; Murdoch on Bankruptcy, ss. 26, 191; Goudy on Bankruptcy 439; Mackenzie's Law of Cessio; Notes by Accountant in Bankruptcy, Printed in Goudy 711.) Persons who claimed the benefit of *cessio bonorum* seem however to have had first to undergo some form of imprisonment before they were liberated, and were forced to stand in the Pillory.

But, on the whole the procedure of *cessio bonorum* afforded a conspicuous instance of the humanity of the common law of Scotland, as an honest debtor, if his failure through misfortune was libelled, sustained, and proved, was invariably liberated. This process of *cessio bonorum* since 1880—2, has entirely changed its character, having been made to supply the place of sequestration in small bankruptcies where the estate is less than £200. Since 1880 imprisonment for debt is not now, except in rare cases, a remedy to which creditors can have recourse. By the common law of Scotland, till the pacification of 1746, creditors were left to their individual remedies by diligence against either the debtor's moveables (by arrestment and forthcoming, by poinding, by writ of extent, and by confirmation as executor creditor), or his heritable estates (by adjudication or inhibition), or against his person. In order to prevent an unseemly and expensive race of diligence, it was found necessary to introduce rules against undue alienations, and undue preferences; the provisions for bringing in *pari passu* all comprisings and adjudication within a year and a day of the first effectual; and the cumbrous procedure of ranking and sale. At common law it was necessary, in order to successfully impugn fraudulent alienations and preferences in prejudice of the general body of creditors, not only that the grantor should be insolvent at the time he granted them, but also that he should have granted them for no valuable consideration or true and just cause. This led to the Scots Parliaments by Acts passed in 1621 and 1696 coming to the aid of creditors who, though they had been unfairly treated by their debtors, were not able to relieve themselves of the heavy onus of proof thus thrown on them. It did so by making "all and whatsoever voluntar dispositions, assignations" etc. granted by "a dyvour or notour bankrupt" within sixty days of his becoming bankrupt null and void. The great commercial progress in the eighteenth century realized by England (Vattel's Droit des Gens, l. i. c. 8, s. 35, p. 37) was also shared by Scotland (Erskine's Principles of the Law of Scotland; Eighteenth Ed. B. IV, Tit. 1 A) and rendered it unadvisable to leave insolvency any longer a matter to be decided purely on individualistic lines, as between debtor and creditor. In 1696, the Scots Parliament passed an Act which gave the earliest definition of notour — i. e. public or notorious insolvency, in 1772 the first sequestration statute was passed, whereby a bankrupt's moveable estate — and it alone — was vested in his creditors for distribution among them; provision was made for his discharge; and diligence against that estate was equalised, if executed within the period of constructive bankruptcy (60 days preceding) set up by the Act of 1696. Heritable property was included by an Act passed in 1783. Many minor improvements were made in 1793, 1814, 1839, and 1853 towards extending the range and cheapening the working of the system. The present law stands on the Act of 1856, as amended, or at least altered, in a few details by later statutes. In 1839 the benefits of the Acts had been extended to the estates of deceased debtors; in 1856 the restriction, in the case of living debtors, to such as were engaged in trade was abolished. In 1880 imprisonment for debt was in most cases abolished; and the process of *cessio bonorum* — which in its old form lost

thus its chief virtue — was transformed, roughly speaking, into a sequestration adapted for small estates. Discharge of debts in a *cessio* was allowed in the following year, under certain restrictions as to minimum dividend, which were applied also to sequestration (Erskine's Principles of the Law of Scotland — Of Insolvency and Bankruptcy — B. IV, T. I A, s. 1, p. 510).

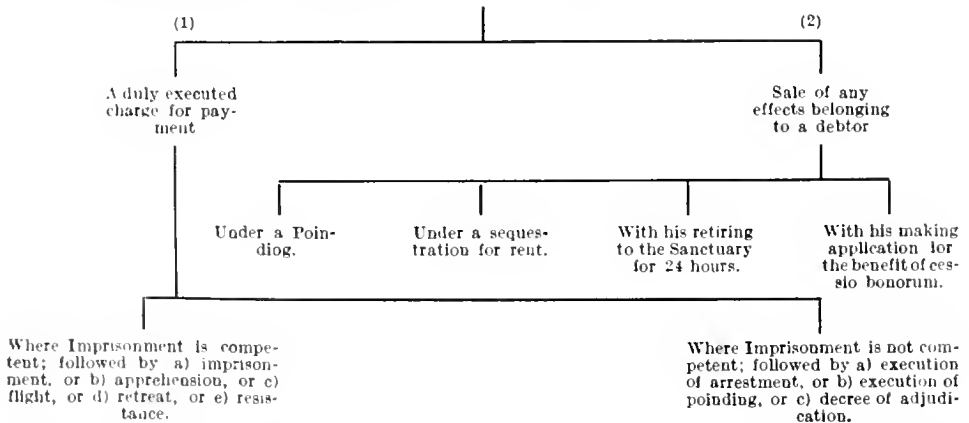
Notour Bankruptcy. Stats. 19 & 20 Vict. c. 79, s. 7; 43 & 44 Vict. c. 34 s. 6. It will have been inferred from the preceding passages, that the law of notour bankruptcy is mainly statutory. Legislation has fixed the circumstances which constitute the status, and has determined all the most important results. Bankruptcy, according to the law of Scotland, is public or notorious insolvency, the third or final stage of which is sequestration, which consists in the divestiture of the bankrupt in favour of a judicial administrator for creditors. The leading idea and aim of sequestration is the object of discharging an insolvent of his debts. Whether or not notour bankruptcy has been constituted is purely a matter of fact, at least where it is constituted by insolvency concurring with an execution of search (Observations of the Lord President in *Nicholsen v. Wright*; S. L. R. Dec. 6, 1872; 104, 108).

The leading idea and aim of notour bankruptcy as statutorily defined is the equitable distribution of the assets of a person in an advanced stage of insolvency among his creditors. The Act of 1856, and the Debtors Act 1880, provide the statutory definition of notour bankruptcy, its effects are regulated still by the Act of the Scots Parliament passed in 1695. The Act of 1856 is by far the most important, as the Debtors Act of 1880 merely added another alternative condition precedent to the constitution of notour bankruptcy, made available in cases where imprisonment was made incompetent by that statute. Notour bankruptcy, then, by s. 7 of 19 & 20 Vict. c. 79, is constituted on the occurrence of any of twenty-seven alternative conditions precedent, twenty-four of which are complex.

The three simple alternative conditions precedent to the constitution of notour bankruptcy under the Act of 1856 are 1. sequestration; or 2. and 3. an adjudication in bankruptcy in England or Ireland. Insolvency concurring either with a duly executed charge for payment (and a number of alternative subsidiary conditions precedent, ex. gr. imprisonment, flight, resistance, execution of arrestment etc.) or with sale of any effects belonging to the debtor under a poiding, or under a sequestration for rent, or with his retiring to the Sanctuary for twenty-four hours (ex. gr. the Abbey of Holyrood, as a royal residence), or with his making application for the benefit of *cessio bonorum*, form the remaining alternative and mutually exclusive (in some instances) conditions precedent to the constitution of notour bankruptcy. The result may be tabulated thus.

The constitution of Notour Bankruptcy occurs by:

1. Sequestration or by an adjudication in bankruptcy in England or Ireland.
2. Insolvency, concurring either with



The Debtors Act 1880 altered the law as to imprisonment, and therefore superadded certain conditions precedent to the constitution of notour bankruptcy in the cases where by section 4, imprisonment was made incompetent. These alter-

natives were divided, additionally, into the two categories where a charge was or was not necessary or competent. In both cases insolvency was requisite. In the first case it had to concur with the expiry of the days of charge without payment, in the latter with an extracted decree for payment and an expiration of a period without payment. The Acts of 1856 and 1880 as far as sequestration is concerned do not apply to railway or joint stock companies (Erskine's Principles of the Law of Scotland; B. IV, Tit. 1 A, s. 1, p. 509) but the notour bankruptcy of some associations can occur, ex. gr. bodies corporate, politic, or collegiate, and partnerships. The notour bankruptcy of such associations is constituted as in the case of a person, or by that of any partner or member for an association debt (s. 4, and 8 of the Act of 1856). It is not necessary, for notour bankruptcy, that the debtor should be engaged in trade. The Act of 1856 provided that notour bankruptcy should apply in the case of privileged persons — married women, incapaces, peers, members of parliament, corporations, small debtors — or in other words in cases where diligence against the debtor's person was inapplicable. By s. 9 of the statute of 1856, notour bankruptcy commences from the time when the requisites of insolvency with charge or sale etc. or of sequestration concur; and it continues, where there is sequestration, till discharge, and in other cases till insolvency ceases, without prejudice to its being constituted anew within that period. Under the old law, where there was no proof of recovered solvency, notour bankruptcy might continue at least four years (*M'Kellar*, (1791) M. 1114; Bell's Oct. Ca. 22). A debtor must be considered insolvent who "stands confessed that he is unable to pay his debts which are due"; and, therefore, "the acceptance of a composition arrangement is no proof of the recovery of solvency but the reverse": (Per Lord M'Laren in *Galbraith v. British Linen Co.* (1898) 36 S. L. R. 139, 143). As to absconding from diligence against the person under s. 7, of the Bankruptcy Act, 1856, it was held, in a petition for recall of sequestration, that a messenger's return of an execution of search is *prima facie* evidence of the debtor having absconded from diligence, and that an averment that the debtor had openly left the country to fill a permanent situation abroad (while he was admitted to be insolvent) was not relevant to overcome the presumption (*M'Bean v. Wight* (1868) 7 M. 23; 41 J. P. 14). It was observed that in order to overcome the presumption the absence must be proved to be necessary. By common law the execution of search is proof of absconding, though it is only a *presumptio juris* and may be redargued, but until it is so redargued, it is established by numerous decisions that the execution of search is conclusive proof of absconding (*Michelson v. Wright* (1872) S. L. R. 104.) In *Knowles* (1865), 3 Macph. 457, incarceration for payment of admittedly just debts was held to infer insolvency, and the presumption was not removed by payment out of a third party's funds. In *Union Bank* (1880), 7 R. 655, the First Division decided unanimously that an order for protection against personal diligence (this process is now practically obsolete) obtained after absconding, was no bar to sequestration applied for on the ground of notour bankruptcy as constituted by insolvency concurring with a duly executed charge and flight. Notour bankruptcy is not affected by an appeal to the House of Lords as to the validity of a sequestration; *Fleming* (1883), 21 S. L. R. 164; affirmed p. 722.

Statutory Sequestration. Stats. 19 & 20 Viet. c. 79; 20 & 21 Viet. c. 19; 23 & 24 Viet. c. 33; 32 & 33 Viet. c. 71; 38 & 39 Viet. c. 26; 42 & 43 Viet. c. 40; 43 & 44 Viet. c. 34; 44 & 45 Viet. c. 22; 52 & 53 Viet. c. 39. Sequestration is a purely equitable statutory process, consisting in a process, which is throughout judicial, of distributing a debtor's estate among the creditors according to their rights. The debtor's estate vests in a trustee or judicial administrator who performs the task of realisation and distribution and winds up the debtor's business or affairs. Sequestration has been defined by Lord J. C. Inglis as "a standing diligence for an undefined body — the creditors of the bankrupt". (*Stewart* (1864), 2 Macph. 1219.) According to a recent decision in the First Division of the Court of Session it is a moot point whether a supervening sequestration prevents the rescission of a sale sought to be set aside on the ground of fraud (*Gamage v. Charlesworth* (1909) 48 Sc. L. R. 191). Notour bankruptcy is a condition precedent to sequestration when it is awarded on the petition of creditors, but not when it is awarded on a debtor's own petition. When it is awarded on a debtor's own petition, there need not be an insolvency, that is an inability to meet current obligations as they arise (see *Bell* (1882), 10 R. 370; Joel, p. 938). The leading

enactments on the subject of sequestration are contained in sections 13 to 30 of the Act of 1856. Sequestration is there made available for the case of all classes of debtors, whether traders or non-traders, and whether the debtor is living or deceased. In the case of a deceased debtor sequestration may be awarded of his estates when at the date of his death he was subject to the jurisdiction of the Supreme Courts, that is to general jurisdiction *ratione domicilii*, and by Scotch law and practice domicile is constituted by 40 days' constant residence. A debtor whose estate may be sequestered may therefore be an alien; but the Court of Session has a statutory power of recalling a sequestration, granted to avoid "inconvenience or scandal", where a majority of the creditors are in England or Ireland, and the situation of the bankrupt's property or other causes make it seem fitting that the distribution of the estate should be in England or Ireland (23 & 24 Viet. c. 33, s. 2; *Brandon* (1862), 24 D. 268; per Lord J. C. Inglis; *Smith* (1869), 8 Macph. 103; *Cooper* (1878), 5 R. 564.) Sequestration may be awarded in the case of bodies corporate, collegiate, politic, or partnerships, but companies registered under the Companies Acts are wound up by liquidation, not by sequestration (*Standard Property Investment Co.* (1884), 12 R. 328.) The qualification of petitioning or concurring creditors by s. 13 of the Act of 1856 is, in the case of a single creditor, a debt of not less than £50 and for two creditors, or three or more, debts amounting together to not less than £70 or £100; the debts may be liquid, i. e. constituted by decree, bill, or the like, or illiquid, but they may not be contingent. Sequestration, therefore, is not equally available in the case of both small and large bankruptcies. Since 1856, sequestration may be awarded by the Sheriff Courts as well as by the Courts of Session. The sequence of important steps in completed sequestration proceedings under the Act of 1856 is;

1. The award of sequestration, ss. 31—40.
2. The election of a trustee, ss. 41—66.
3. The public examination of the bankrupt; ss. 87—95.
4. The second meeting of the creditors, called in practice the "second statutory meeting"; ss. 96—101.
5. The payment of dividends; ss. 111—136.
6. Discharge of the bankrupt, ss. 137—155.

If a debtor petitions, sequestration must be awarded forthwith. When the petition is not by the debtor sequestration is awarded after citation and hearing the parties. A creditor's petition must be presented within four months of notour bankruptcy being constituted; but there is nothing to prevent a new act of bankruptcy being committed by an undischarged bankrupt. In the latter case the petition may be presented at any time, but the award cannot without consent of the representatives be made within six months after the death. The claims founded on by creditors in concurring of petitioning may include interest and ascertained expenses; and discount should probably be awarded where the debt is not yet exigible. (See forms of Petition for Sequestration in Green's Encyclopædia of Scots Law Vol. II Art. Sequestration, p. 257.) The petition may, in all cases, be presented to the Lord Ordinary on the Bills in the Court of Session (B. A. ss. 18, 21), but, alternatively, it may in the case of a living debtor, be presented to the Sheriff of the county in which the debtor has resided or carried on business for a year preceding (s. 18), and in the case of a deceased debtor to the Sheriff of the county in which the debtor for the year preceding his death had resided or carried on business. In the Court of Session the process is a Bill Chamber one, and Bill Chamber procedure is observed as far as applicable (s. 43; see *Kerr* (1845), 7 D. 809; *Scott* (1848), 10 D. 732; *Gow* (1862), 1 M. 25; *Cooper* (1878), 5 R. 414; Mackay, Practice 14). No sequestration falls asleep — i. e. is liable to be dismissed — under the 15th section of the Sheriffs Court Act, 1853 (16 & 17 Viet. c. 80), in respect of failure to proceed therein during a period of three consecutive months.

A petition must be signed by the petitioner or his agent whether it is presented to the Lord Ordinary or to the Sheriff. The first important event and date at the completion of the first act in sequestration proceedings is the date of the first deliverance on the Petition for sequestration, issued by the Lord Ordinary or the Sheriff. The trustee is then elected by the creditors, under the superintendence of the Sheriff, and he proceeds with advice of three commissioners, and of the creditors themselves, to have the estate and effects sold and realized, and the proceeds divided. The appointment of trustee is confirmed by a final interlocutor of the

Sheriff known as the Act and Warrant. This Act and Warrant is a complete title to the trustee to perform the duties of his office. The vesting is of the most ample effect both in moveable estate and heritage situated in Scotland or in any of His Majesty's dominions. The general adjudication operates as such to all the creditors, accumulating their debts as at the date of the first deliverance, and ranking with any prior effectual adjudication within year and day. The creditors may direct the estate thus rested in the trustee to be sold by the old process of judicial sale, or by public voluntary sale on articles of roup (auction). The price is lodged in a bank, subject to division in the sequestration. There must be produced with the petition:

1. An oath or affidavit to the verity of the debt due to the petitioning or concurring creditor.
2. The account and vouchers of the debt (s. 21).
3. Written evidence of the debtor's notour bankruptcy where the debtor is not petitioner (ss. 13, 26).

The bankrupt, who usually obtains a weekly dole from the estate, must put in at the first meeting a state of affairs and rental. After the Act and Warrant is issued a day is fixed for his examination. This is not conducted on the technical rules of evidence. At the end of each diet, or of each adjourned diet, the bankrupt takes oath to having made, and a promise to make, a full disclosure of his debts. Any relative or dependent of the bankrupt may be compelled to attend. Dividends are to be paid, the first at the end of six months, the second at the end of ten months and the subsequent dividends at the end of every three months. The ranking of creditors is regulated substantially by the same rules as their voting. A bankrupt under sequestration retains the radical right to his estate and therefore he may interfere in various ways in the process. He may apply for an award and for a recall he may report a deed of arrangement; he may insist on an accounting; he may offer a composition; he may obtain an allowance. He cannot sit or vote in the House of Lords or be elected as a representation peer. He cannot sit or vote in Parliament, or offer himself as a candidate. His actions are sisted to the trustee. The bankrupt must sue in a personal action, ex. gr. divorce or reparation. The bankrupt may claim his discharge on dividend or payment of a composition (B. A. ss. 121—145). Sequestrations must be registered (B. A. s. 48). The minutes of creditors in a statutory sequestration are proper *prima facie* evidence of its proceedings. The Gazette is evidence of sequestrations and discharges of bankrupts.

Of Insolvency and Equalization of Diligence. (B. A. 1856, Constitution and Effects of Notour Bankruptcy s. 7 to s. 11; *Pari Passu* Ranking of Diligence s. 12.) By s. 22 arrestments and poindings used within sixty days prior to or within four months after, the constitution of Notour Bankruptcy, are ranked *pari passu* as if they had all been of the same date; provided that they are followed up without undue delay when they are arrestments used on the dependence of an action or on an illiquid debt. If any creditor produces liquid grounds of debt or decree of payment within the periods limited he is entitled to rank as if he had executed an arrestment or poinding. If either an arrester obtains a decree of forthcoming and preference, or a poinding creditor carries through a sale, the arrestment or poinding having been used within 60 days prior, or within four months subsequent to, the constitution of Notour Bankruptcy, he is liable for the sum recovered to those who have a right to ranking *pari passu*, after deducting the expenses. Any arrestments used after the period of four months for attaching the same goods are not to compete with those used before, but may rank according to law on any reversion.

(Bibliography on Notour Bankruptcy; Bell, Com. ii, 192 *et seq.* Goudy on Bankruptcy, 65 *et seq.* Murdoch on Bankruptcy, 10, 155; Mackay, Manual; Ersk. B. ii, t. 12, ss. 59—63; B. IV, t. 1, ss. 1, 615. Bell's Principles of the Law of Scotland, B. 5, c. 5, s. 2322 *et seq.* and the treatises on Bankruptcy of Alexander, Hill Burton, and Boyd Kinnear. On the subject of Sequestration; see Bell's Com. 5, 5th ed. ii, 302—486. Bell's Princ. of the Law of Scotland, B. 5, ch. 6, ss. 2341 to 2351. Note in Ersk. Inst. ii, 1096—1100; Note by Prof. Moir, Ersk. Princ. 17th ed. 597; Murdoch's Bankruptcy 5th ed., Goudy's Bankruptcy, p. 1—12, 117—436, 490—493; the treatises of Alexander, Hill Burton, and Boyd Kinnear on Bankruptcy; Mackay's Prac. 1, 317, ii, 424; Campbell's Merc. Law 22—45.)

Bankruptcy Law of Ireland.

I. Statutes.

- 1857 — The Irish Bankrupt and Insolvent Act — 20 & 21 Vict. c. 60.
- 1872 — The Debtors Act (Ireland) — 35 & 36 Vict. c. 57.
- 1872 — The Bankruptcy (Ireland) Amendment Act — 35 & 36 Vict. c. 58.
- 1879 — Bills of Sale (Ireland) Act — 42 & 43 Vict. c. 50.
- 1883 — Bills of Sale (Ireland) Act (1879) Amendment Act — 46 Vict. c. 7.
- 1887 — Deeds of Arrangement Act — 50 & 51 Vict. c. 57.
- 1888 — Local Bankruptcy (Ireland) Act — 51 & 52 Vict. c. 44.
- 1889 — Preferential Payments in Bankruptcy (Ireland) Act — 52 & 53 Vict. c. 60.
- 1890 — Deeds of Arrangement Amendment Act 1890 — 53 & 54 Vict. c. 24.
- 1897 — Supreme Court of Judicature (Ireland) (No. 2) Act — 60 & 61 Vict. c. 66.

II. Preliminary Observations.

The principal English Bankruptcy Act is an Imperial statute, and therefore imposes obligations on English subjects, wherever domiciled, and any warrant of a Court having jurisdiction in bankruptcy in England may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in his Majesty's dominions (Bankruptcy Act, 1883; s. 119; ss. (1)). But the principal English Bankruptcy Act does not apply to Ireland, except as expressly provided — as in the disqualifications attaching to bankruptcy — and hence the Irish Bankruptcy legislation possesses an independent importance. On the very important subject of administration, the principal Irish Act — the Irish Bankrupt and Insolvent Act, 1857 — represents a compromise between the opposite principles of private and of official administration. The principal English Act of 1883, as has been seen, has reverted to officialism in a very pronounced form. The principal Irish Act of 1857 also consecrates the principle of official administration, as it provides for the appointment of an Official Assignee whose duties correspond with those of the Official Receiver in England in so far as the bankrupt's estate is possessed and received by him alone (s. 60). But the creditors may also (though they are not bound to) choose an assignee or assignees, with whom the Official Assignee acts, and after assignees have been chosen by the creditors, the Official Assignees may not interfere with the creditors' assignees in the appointment or removal of a solicitor or attorney (*Ibid.* s. 64). The Irish Bankrupt and Insolvent Act 1857, therefore, represents a compromise between a private and an official administration of a debtor's estate.

Imprisonment for debt is abolished in Ireland as in England with certain exceptions. These exceptions are also identical in both countries (The Debtors Act, 1869, Part. I, section 4; and The Debtors Act (Ireland) 1872, Part. I, s. 5). The former terrible abuses that arose from the imprisonment of debtors in Dublin, rivalled, if they did not transcend, those attending the imprisonment of debtors in the Fleet prison in England. In 1711 the Irish Convocation ordered a special form of prayer for imprisoned debtors to be inserted in the Irish Prayer-Book. The 'Messiah' of Handel was first produced in Dublin, in April, 1742, for the benefit of societies formed for ameliorating the condition of the inmates of debtors' prisons and compounding with their creditors and releasing as many as possible from prison. Yet Parliamentary inquiries only demonstrated the existence of grievances that were allowed to continue. The worst criminals were mingled with the debtors. The jailors demanded payment from the debtors; the poorer debtors died of extreme want (Froude's *English in Ireland*; Vol. 1 pp. 591 to 592; Lecky's *Hist. of England*; Vol. 1 pp. 500, 502, 536). The remedy applied to this disastrous state of affairs in Ireland was the same as in England, and constituted, in the opinion of Sir Samuel Romilly, a scarcely inferior evil than that of lifelong imprisonment for debt. This so-called remedy consisted in the passing of occasional Insolvent Debtors Acts, passed at uncertain but never at distant periods, 1796, 1810, 1812, 1813—1814, 1821, 1831, 1840, 1841, which abrogated the law, cancelled mens' contracts, and turned loose a crowd of insolvent debtors, because they were multiplying so fast that the prisons were not capacious enough to hold them.

Neither in England nor in Ireland may an association or company registered under the Companies Act, be adjudged bankrupt (Bankruptcy Act, 1883, Pt. VIII, s. 123; The Bankruptcy (Ireland) Amendment Act, 1872, s. 31). Railway companies might formerly, but are not now liable to be adjudged bankrupt in Ireland (Kisbey's Law and Practice of Bankruptcy in Ireland, p. 148).

Another instance of the indubitable correspondence between English and Irish bankruptcy law exists in the fact that the first two categories of acts of bankruptcy enumerated in s. 21 of the Bankruptcy (Ireland) Amendment Act, 1872, are in the *ipsissima verba* of the enactment *in pari materia* in the Bankruptcy Act, 1883 — i. e. section 4. Many of the succeeding categories of acts of bankruptcy are also defined in precisely similar terms in the two enactments, e. gr. the acts consisting in a debtor departing out of the country with intent to defeat or delay his creditors, or in filing a declaration of his inability to pay his debts, or in the debtor's presenting a bankruptcy petition against himself. The general effect of the passing of the principal English Bankruptcy Act of 1883 has been to reconcile many differences that previously existed between the law of bankruptcy in England as fixed by the statute of 1869 and the Irish Bankruptcy law. Before 1883, the petitioning creditor's debt, in England, was required to be presently payable, otherwise it would not support an adjudication. But now by s. 6, ss. (1) par. b, this is not the law in England; a debt payable at some certain future time is a good petitioning creditor's debt. In this respect, the English Act of 1883 is in *pari materia* with s. 21 of the Bankruptcy [Ireland] Amendment Act, 1872, by which a person who has given credit to any debtor upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such debtor commits an act of bankruptcy, may petition against such debtor. Again, formerly in England, an equitable debt was held in many cases not to be a good petitioning creditor's debt [Williams on Bankruptcy; p. 42; Baldwin on Bankruptcy and Bills of Sale; p. 89]. Although there is no express provision to the effect that an equitable debt is sufficient to support a petition in the English Act of 1883, the whole current of authority is to the effect that it is sufficient (*Ex parte Ashworth* (1894), 63 L. J. Q. 2 B. 308). Although there is no express provision to that effect in s. 21 of the Bankruptcy [Ireland] Amendment Act, 1872, it seems that an equitable debt is a good petitioning creditor's debt in Ireland (The Law and Practice of Bankruptcy in Ireland; By His Honour Judge Kisbey Q. C. pp. 135, 136). Again, before 1883, the rights of a "secured creditor" under the Irish bankruptcy law were more restricted than those of a secured creditor in England; but now by section 45 of the English Act of 1883, execution creditors are deprived of the benefit of their execution if they have not realized by seizure and sale before the date of the receiving order. In this respect the English bankruptcy law now approximates to the Irish bankruptcy law though the rights of a secured creditor still remain more restricted in Ireland than in England, as by section 329 of the Act of 1857 an execution creditor in Ireland is deprived of the benefit of his execution if he has not realised by seizure and sale before the filing of the petition in bankruptcy, which of course must be prior to the date of the receiving order.

III. Differences between Irish and English Bankruptcy Law.

The Supreme Court of Judicature (Ireland) (No. 2) Act, 1897, united and consolidated the Court of Bankruptcy in Ireland with the Supreme Court, just as the Bankruptcy Act 1883, s. 93, united and consolidated the London Bankruptcy Court with the Supreme Court of Judicature in England. The great difference between the Courts having jurisdiction in bankruptcy in England and Ireland is that there is no limitation to the jurisdiction of the Cork and Belfast local Bankruptcy Courts in the Local Bankruptcy (Ireland) Act 1888 similar to that contained in s. 102 of the Bankruptcy Act 1883. The local Bankruptcy Courts at Cork and Belfast are presided over by the Recorders, and not by the County Court judges (Local Bankruptcy (Ireland) Act 1888). The Supreme Court of Judicature (Ireland) (No. 2) Act, 1897, continues by ss. (2) of s. 4, the enactment contained in s. 29 of the Irish Bankruptcy and Insolvent Act, 1857, that appeals from Bankruptcy Courts in Ireland lie to the Court of Appeal in Chancery. This seems to shew that very different views of the nature of bankruptcy proceedings must have been taken in Ireland to those which have always prevailed in England.

An important difference between bankruptcy jurisdiction in England and Ireland is that in Ireland the Chief Registrar acts as Comptroller of Trustees (Rules of Court, 219 *et seq.*), while in England the Board of Trade takes cognizance of the conduct of trustees (Bankruptcy Act, 1883, s. 91). Again, in Ireland, an act of bankruptcy only arises from levying execution on the debtor's goods when the execution has been completed by sale, when the debtor is a trader, and when the debt is over £20 (Bankruptcy (Ireland) Amendment Act, 1872, s. 21, (5)). The corresponding section of the English Act of 1883 prescribes, as an alternative condition that the goods should have been held by the sheriff for twenty-one days; no distinction is drawn between traders and non-traders (this has been abolished since 1861 in England), and there is no requisition as to the amount due (Bankruptcy Act 1890, s. 1). The amount of a good petitioning creditor's debt in Ireland is not less than £20 (Bankruptcy (Ireland) Amendment Act, 1872, s. 21 (5) (6)), not £50, as in England. The act of bankruptcy consisting in a debtor departing from of his dwelling house, or otherwise absenting himself, can in Ireland only be committed by traders; and in Ireland a debtor's suffering himself to be outlawed is an act of bankruptcy (The Bankruptcy (Ireland) Amendment Act, 1872, s. 21 ss. (3)). In England outlawry is still an integral part of the criminal law, and the forfeiture accruing under it is expressly saved by s. 1 of the Forfeiture for Treason and Felony Act, 1870. This Act applies to Ireland, and the joint effect of the Felony Act, 1870, s. 1 and the Bankruptcy (Ireland) Amendment Act, 1872, s. 21 is that a debtor in Ireland who suffers himself to be outlawed is both declared bankrupt and forfeits his property to the Crown. But it must be remembered that all proceedings by way of outlawry have long since fallen into total desuetude.

Another important difference between the law of bankruptcy in Ireland and that in England is that, in Ireland, the dismissal of the debtor's petition for arrangement with his creditors constitutes an act of bankruptcy (Bankruptcy (Ireland) Amendment Act, 1872, s. 21 ss. (7)). But in England if the Court refuses a scheme proposed by the debtor, an immediate adjudication will only be made in the most exceptional circumstances. By the Irish Act of 1872 it was also made an act of bankruptcy for a debtor to be in prison for debt for a certain period, or to escape from prison after having been committed there for debt, but this provision may now be regarded as obsolete, since imprisonment for debt (with certain exceptions) is abolished in Ireland as in England.

By far the most important difference between the English and the Irish bankruptcy law is that, by the principal act of 1857, the latter extends to aliens and denizens, both to make them subject thereto and to entitle them to all the benefits given thereby (s. 409). This constitutes a feature in which the Irish bankruptcy law totally differs from the English law, as the latter does not apply even to persons domiciled in Scotland or Ireland. An order of adjudication either in England or Ireland will not, it is presumed, be recognized in foreign countries as operating to transfer to the trustee for the creditors real property there situate, but the practical effect of s. 409 of the Irish Bankrupt and Insolvent Act 1857, is that an alien or denizen (much more an Englishman or Scotchman) is subject to the Irish bankruptcy law without having been domiciled in Ireland and without having resided there for a year, when he has committed an act of bankruptcy in Ireland, and this liability extends to all his personal estate.

The word "property" is not defined in the Irish Acts of 1857 or 1872 (Kisbey's Law and Practice of Bankruptcy, p. 122) though it is defined in the principal English Act of 1883 s. 168. The definition adopted in Ireland seems to be that contained in the now repealed English Act of 1869, which does not comprise, like the definition given in the Act of 1883, real and personal property situate out of the jurisdiction.

The difference between the Irish and English bankruptcy law as regards traders and non-traders is a complicated difference. On the one hand, while the distinction is generally considered to have been abolished in England since the Act of 1861, it has equally been considered that, as regards the power of the Court to order goods to be sold of which the bankrupt is reputed owner, the distinction between traders and non-traders has even become accentuated in the English law of bankruptcy (Bankruptcy Act, 1883; s. 44 par. (iii)). On the other hand, though the Irish Courts have an exclusive jurisdiction over traders trading exclusively in Ireland (Irish Bankrupt and Insolvent Act 1857, s. 31), the reputed ownership clause of

the Irish Act is judicially construed as applying both to traders and non-traders; a result probably not contemplated by the legislature [Irish Bankrupt and Insolvent Act, 1857, s. 313; and the Law and Practice of Bankruptcy in Ireland; By Judge Kisbey, Q. C. p. 360]. But while the English Acts make no distinction between traders and non-traders as far as the capacity to commit an act of bankruptcy is concerned, there are two (at least) acts of bankruptcy that, according to the Irish law, can only be committed by a trader; ex. gr. the act consisting in the debtor departing from his dwelling house, or otherwise absenting himself (The Bankruptcy (Ireland) Amendment Act, 1872, s. 21 ss. (3)), and the act consisting in execution issued against a debtor having been levied by seizure and sale of his goods (Ibid. ss. (5)). Again, for the purpose of committing an act of bankruptcy, the Irish Bankruptcy Acts in other respects disadvantageously distinguishes the liability of a debtor who is a trader from that of a debtor who is a non-trader, ex. gr., the period limited for non-compliance with a debtor's summons in the case of a trader debtor is seven days, while non-compliance in the case of a non-trader debtor does not amount to an act of bankruptcy unless it has been continued for more than three weeks (The Bankruptcy (Ireland) Amendment Act, 1872, s. 21; ss. (6)).

IV. Proceedings from Act of Bankruptcy to the granting of the Certificate of Conformity.

Acts of bankruptcy. It is not proposed to deal with those enactments in the Irish Bankruptcy Acts which are identical with the provisions in the Bankruptcy Act, 1883, as to what constitutes an act of bankruptcy. The construction of the Irish Acts is determined in this respect by English decisions, and it will be sufficient to refer what has been already said as regards section 4 of the Bankruptcy Act, 1883 (*supra*). It has been said that the acts of bankruptcy in the Bankruptcy (Ireland) Amendment Act, 1872, s. 21 may be classified under three subdivisions; first, those which affect all debtors; secondly, those which affect debtors who are traders; and thirdly, those which affect debtors who are non-traders. The first category of course comprises the corresponding enactments in English and Irish bankruptcy law, but there are acts of bankruptcy which may be committed by debtors in Ireland, which find no place in the Bankruptcy Acts 1883 and 1890; ex. gr. where a debtor suffers himself to be outlawed. Again though the act of departing from his dwelling house or otherwise absenting himself is an act of bankruptcy which only affects debtors in Ireland who are traders, what constitutes an act of departing, etc., is determined in the light of the English decisions. The words being a trader in subsection 3 of section 21 of the Bankruptcy (Ireland) Amendment Act 1872, mean being a trader at the time when the debtor's summons is served, and not at the time when the debt was contracted (*Ex parte Schomberg* (1874) 10 Ch. 172, 174; *Ex parte George* (1882) 20 Ch. D. 697). The onus is on the petitioning creditor to shew that the debtor is a trader (Per Jessel; M. R., in *Ex parte Salaman* (1882) 21 Ch. D. 394, 395). Whether a person is a trader or not at the time a debtor's summons is served upon him is a mere question of fact, and the law relating to the subject is very old; it depends on the debtor's intention, and he is presumed to still intend to trade when he has only temporarily discontinued his trade with the intention of resuming it (*Ex parte Paterson* (1813) 1 Rose, 402; *Ex parte Cundy* (1816) 2 Rose, 357; *Ex parte Salaman* (1882) 21 Ch. D. 394). From the moment of an assignment of his business the debtor ceases to be a trader (*Ex p. Reynolds* (1883) 52 L. J. Ch. 431). Taking in horses by a farmer for the purpose of training no more makes him a trader than if he took in pupils to teach them to dance, for which he was paid a pecuniary sum from time to time (*Re Wilkinson* (1883) 48 L. T. 648).

The following provision in the Bankruptcy (Ireland) Amendment Act, 1872; s. 21, (4) that it constitutes an act of bankruptcy "that the debtor has filed in the Court a declaration of insolvency pursuant to the provisions of the said Act as amended by this Act", is *in pari materia* with the enactment in the principal English Act of 1883 providing that it constitutes an act of bankruptcy for a debtor to file in the Court a declaration of his inability to pay his debts. "Declared Insolvency" does not appear to be a technical term in Scotch law (*Hannan* (1879), 7 R. 380; *Nelson Mitchell*, (1878), 6 R. pp. 430—433) and may be assumed not to be a technical term in Irish law, as the definition of declaration of insolvency

for the purposes of the Irish bankruptcy law is to be sought from an English decision [*Ransford v. Maule* (1873) L. R. 8 C. P. 672]. According to this case insolvency simply means inability to pay current obligations, and the filing of a declaration of inability to pay by a debtor is complete on the delivery of the document by a properly authorized person to the proper officer at the proper office, with intent that it should be filed or placed on record in the ordinary manner. (Kisbey's Law and Practice of Bankruptcy in Ireland; p. 131.)

By section 21 (5) of the Bankruptcy (Ireland) Amendment Act 1872, it constitutes an act of bankruptcy "that execution issued against the debtor for the purpose of obtaining payment of not less than twenty pounds has in the case of a trader been levied by seizure and sale of his goods". This enactment constitutes a new departure in Irish bankruptcy law, and a difficulty has been considered likely to arise on the question whether the act of bankruptcy is constituted by the seizure or by the sale [Kisbey's Law and Practice of Bankruptcy in Ireland, p. 131]. But as subsection 5 is *in pari materia* with section 1 of the English Bankruptcy Act of 1890, there can be no doubt, according to an opinion of great weight that the relation back is only to the time of sale, and not to the time of seizure. This was indubitably the case under the prior Act of 1869 (Williams on Bankruptcy, p. 24). The differences between this enactment and the corresponding English enactment are that:

1. It is only applicable to traders.
2. The execution must have been levied for not less than £20; here the Irish Bankruptcy Act is less stringent than the English, as in England a debtor commits an act of bankruptcy if execution is levied against him for a less sum than £20 and the goods are sold or held by the sheriff for twenty-one days.
3. Sale under an execution is the sole condition precedent to the constitution of an act of bankruptcy under par. 5; whereas there is also a completed act of bankruptcy under section 1 of the English Bankruptcy Act of 1890 if the goods have been held by the sheriff for twenty-one days.

By section 21 (6) of the Bankruptcy (Ireland) Amendment Act 1872, an act of bankruptcy is constituted by the fact "that the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring a debtor to pay a sum due, of an amount of not less than twenty pounds, and the debtor being a trader has for the space of seven days, or not being a trader has for the space of three weeks, succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same". It is not necessary for the validity of a debtor's summons that the prescribed forms should be literally followed; it is sufficient if they have been in substance complied with, and that the debtor has not been misled and knew of the indebtedness alleged against him. (*Pim v. Shiel* [1910] 2 K. B. 399. Ir.) This provision is *in pari materia* with par. g. of section 4 (1) of the English Act of 1883; but the Irish enactment, like the previous English Act of 1869, makes the act of bankruptcy consist, not in non-compliance with a bankruptcy notice, but in non-compliance with a debtor's summons served by the petitioning creditor. The other differences are that in England any creditor may found a petition on an act of bankruptcy under the Bankruptcy Act 1883, s. 4 (1) par. g. whether or no he was the creditor who issued the bankruptcy notice, and that although the judgment has been paid in Ireland no one but the summoning creditor can take advantage of the act of bankruptcy under section 216 of the Bankruptcy (Ireland) Amendment Act 1872. The words "sum due" in subsection (6) mean "presently payable". A debt or sum due means a debt of which payment can be enforced; and consequently a debt payable at a future date is not a debt due at law or in equity on which a petition for adjudication can be founded [Per Sir James Bacon in *Ex p. Sturt* (1871) L. R. 13 Eq. 309, 311]. In this respect section 216 of the Bankruptcy (Ireland) Amendment Act is *in pari materia* with the analogous enactment in the Act of 1883, as under par. g. of ss. (1) of sec. 4 of the latter act a creditor can only found a petition on a final judgment in respect of which he may issue execution. Non-compliance with a debtor's summons, though not an act of bankruptcy now in England, was constituted such an act by the statute of 1869, and was what was called a limited act of bankruptcy, i. e., it was only available as an act of bankruptcy upon which to found a petition to the particular creditor who had taken out the summons;

and this is now the construction in Ireland as regards non-compliance with a debtor's summons. It may be regarded as a consequence of the principle that no one but the summoning creditor can take advantage of non-compliance with a debtor's summons, that it is obligatory to prove on the hearing of the petition the act required to sustain the petition (*In re Rogers* (1880) 15 Ch. D. 207). As regards the debtor being a trader, see *Ex p. Schomberg* (1875), L. R. 10 Ch. 172; *ex p. M' George* (1882), 20 Ch. D. 697; and *ex p. Salaman* (1882), 21 Ch. D. 394.

The next act of bankruptcy is that defined by section 21 (7) of the Bankruptcy (Ireland) Amendment Act, 1872, as consisting in the dismissal of the debtor's petition for arrangement with his creditors. This, as has been noticed, constitutes a marked departure from the principles of English bankruptcy law, by which an immediate adjudication will only be made in the most exceptional circumstances, where the Court has refused to approve of a scheme of arrangement with creditors proposed by a debtor (*In re Flew* [1904] 1 K. B. 278). The conditions on which a petitioning trader-debtor's petition for arrangement with his creditors will be dismissed, *ex. gr.* non-attendance, not filing account, etc. are set out in section 353 of the Irish Bankrupt and Insolvent Act, 1857. Under subs. 7 of section 21 of the Bankruptcy (Ireland) Amendment Act, 1872, it has been held that where an adjudication founded on the presentation of a petition for arrangement is dismissed, the act of bankruptcy is complete only on the dismissal of the petition, and there is no relation back to the day of its presentation (*Merchant Banking Co. v. Spotten* (1877) Ir. R. Eq. 586). The next act of bankruptcy, consisting in the suffering of a previous term of imprisonment, may be regarded as of no practical importance since the abolition of imprisonment for debt in Ireland by the Debtors Act 1872. While in England the amount of a good petitioning creditor's debt is a sum not less than £50, in Ireland it is a sum not less than £20. But, with this material exception, there is no difference in principle between the enactment in the Irish Act providing what is a good petitioning creditor's debt (Bankruptcy (Ireland) Amendment Act 1872, s. 21), and the corresponding provision in English law (Bankruptcy Act 1883, s. 6). Nor is there any difference between the rights of a secured creditor in the laws of the two countries, except that, by express enactment, a secured creditor in Ireland who has given an estimate of the value of his security without giving it up, may be required to give it up, on the application of the assignees or trustee, if he seeks to prove in bankruptcy for the balance of his debt (Bankruptcy (Ireland) Amendment Act 1872; s. 21). In England, it has been held that the trustee cannot compel the petitioning creditor under the rules in the Second Schedule to hand over his security on payment of the estimated value (*Ex p. Saffery* [1899] 2 Q. B. 549; Williams on Bankruptcy, p. 46).

Vesting of estate in Official Assignee. The real and personal estate and effects of a bankrupt in Ireland vests exclusively in the Official Assignee on the granting of the petition (Irish Bankrupt and Insolvent Act 1857, s. 60), till, after adjudication, a trustee is appointed by special resolution at a general meeting of creditors, when the Court, in its discretion, gives the trustee a certificate declaring him to be the bankrupt's trustee. On the granting of this certificate all the estate, both real and personal, of the bankrupt is divested out of the Official Assignees and is vested in the trustee (The Bankruptcy (Ireland) Amendment Act 1872, s. 91). Though the Official Assignee is the sole interim receiver of the debtor's effects from the date of the presentation of the petition to that of the appointment of the trustee, he may act with assignees chosen by a major part in value of the creditors (Irish Bankrupt and Insolvent Act 1857, s. 265). There is nothing to correspond to assignees chosen by the creditors, who act with the Official Assignee as interim receivers, in English bankruptcy law.

Administration of estate. The bankrupt's estate is wound up in Ireland by the trustee in conjunction with a committee of inspection appointed by resolution at a first meeting of creditors. The committee of inspection must not exceed five in number, and must either consist of creditors qualified to vote, or else of persons authorized by persons qualified to vote (Bankruptcy (Ireland) Amendment Act 1872, ss. 87—121). The trustee of the property of the bankrupt may be required to give security. Upon the granting of the certificate of the trustee's appointment, the bankrupt, under pain of punishment for contempt of court or other punishment, must generally do all such things and acts in relation to his pro-

perty and its distribution among his creditors as may reasonably be required either by the trustee, or by the rules or special order of Court. The conduct of the administration of the property of the bankrupt by the trustee and committee of inspection is subject to any directions that may be given by resolution of the creditors at any general meeting. The trustee must call a meeting of the committee of inspection once at least every three months, when they shall audit his accounts, and determine what dividend is to be paid. The trustee may also summon special meetings of the committee of inspection, and general meetings of the creditors. The bankrupt may be required to give an inventory of his property, a list of his creditors and debtors, and to attend meetings of the creditors, and to wait upon the trustee.

Arrangements. As to arrangements under the control of the Court see the Irish Bankrupt and Insolvent Act 1857; ss. 343—357. The conditions under which a certificate in arrangement cases may be obtained in Ireland are more restricted than those under which the Court will attach its seal to an instrument of composition in England. Again, in Ireland the certificate in arrangement cases operates absolutely as a certificate of conformity under a bankruptcy but this proposition is subject to some limitation as regards compositions in England, at least according to cases decided under the Act of 1869, which appear still to be relevant [Williams on Bankruptcy, p. 82].

Adjudication of Bankruptcy. An order of adjudication may be annulled by the acceptance by the trustee of a composition offered by the bankrupt (The Bankruptcy (Ireland) Amendment Act 1872, s. 226), but if the bankrupt has concealed the fact that he was entitled to property, the order to annul the bankruptcy will be annulled, and creditors, including the mortgagees, who have compromised their claims will be remitted to their original rights (*Ex. p. Jarvis* (1879) 10 Ch. D. 179). Adjudication has a more limited effect in Irish bankruptcy law than in that of England, as in Ireland the real and personal estate of the bankrupt only vests in the trustee by virtue of the Court giving him a certificate, whereas in England the real property of the bankrupt vests in the trustee on adjudication (Williams on Bankruptcy, p. 83). Again adjudication against a prisoner for debt has relation back to the date of his commitment or detention, as the case may be, in Ireland (The Bankruptcy (Ireland) Amendment Act 1872, s. 23), a provision which, since the abolition of imprisonment for debt by the Debtors Act 1872, would seem likely to be abrogated by desuetude. The period of relation back in Ireland is for six months, while in England it is for three months. There seems to be no enactment in the Irish legislation limiting the period of relation, but decisions cited on the construction of s. 328 of the Irish Bankrupt and Insolvent Act, 1857, make it clear that the period of relation is six months in Ireland, as it was in the Act of 1869 in England (Williams on Bankruptcy, p. 490; Kisbey on the Law and Practice of Bankruptcy in Ireland, pp. 326, 391).

Control over Person and Property of Debtor. See the Irish Bankrupt and Insolvent Act, 1857, s. 124, 125 (as to Control over Person); as to Power of Court in relation to Property: The Bankruptcy (Ireland) Amendment Act, 1872, ss. 50—55; The Irish Bankrupt and Insolvent Act 1857; ss. 308—328. There seems no substantial difference between English bankruptcy law and the Irish law as far as the control of the Court over the person of the debtor is concerned. The powers of the Court in Ireland as to discovery of the debtor's property, and redirection of the debtor's letters, appear virtually identical with the powers conferred on the Court by the principal English Act of 1883.

Discharge of Bankrupt. (Certificate of Conformity.) See the Bankruptcy (Ireland) Amendment Act 1872, ss. 56—60; 72; Form of; Schedule B: Irish Bankrupt and Insolvent Act 1857; ss. 138—148; Rules of Court; 8, 234—240. In Ireland a certificate of conformity corresponds to the order of discharge in English law. The conditions under which a certificate of conformity can be obtained in Ireland are generally less restricted and stringent than those under which an order of discharge can be obtained in England, but in Ireland a certificate of conformity may be withheld or suspended on the mere ground that a prosecution has been commenced against the bankrupt in pursuance of the provisions relating to the punishment of fraudulent debtors contained in the Debtors Act (Ireland) 1872. According to the English Bankruptcy Act 1890, s. 8, the Court will (inter alia) only refuse or suspend the bankrupt's discharge when he has been not only indicted but also con-

victed of any misdemeanour under the Debtors Act, 1869, or the principal Act, or of any other misdemeanour connected with his bankruptcy, or of any felony connected with his bankruptcy. A certificate under the Irish Bankrupt Act was held to be a discharge as well of those debts due from the bankrupt in England or Scotland as of those in Ireland [See the Irish case of *Rogers v. Love*, referred to in *Ferguson v. Spencer* (1840), 1 M. & G. 987, 1001; Story, Conflict of Laws, ss. 355, 342, 348, 350, 5th ed.]. A bankrupt may apply for a certificate of conformity either

1. After passing his final examination in a bankruptcy held before the Court.
2. At the close of a bankruptcy wound up by a trustee and committee of inspection; or
3. During the continuance of a bankruptcy of the latter kind with the assent of the creditors testified by a special resolution.

In case 1. the application will be successful if either the bankrupt has paid a dividend of ten shillings in the pound, or if he cannot justly be held responsible for his failure to do so. In cases 2. and 3. the bankrupt's application for a certificate of conformity will be successful if:

- a) He has either paid a dividend of ten shillings in the pound, or has only been prevented from doing so through the negligence or fraud of his trustee;
- b) His creditors pass a special resolution to the effect that they desire that the bankrupt should be granted a certificate of conformity although he has not paid a dividend of ten shillings in the pound, because his failure to do so has arisen from circumstances for which he cannot be held responsible.

On the other hand, the Court will suspend or withhold a certificate of conformity when

1. Criminal proceedings under the Debtors Act (Ireland) 1872 have been instituted against the bankrupt.
2. The bankrupt has failed to make a full discovery and disclosure of his property and effects or has made default in giving up his property.

Although the contingencies on which a certificate of conformity will be withheld or suspended in Ireland do not comprise all the contingencies on which a bankruptcy Court in England will refuse to discharge a bankrupt, the effect of judicial construction of section 56 of the Bankruptcy (Ireland) Amendment Act has been to assimilate the two enactments. Thus, though the Irish enactment, unlike the English enactment, does not expressly render the neglect of the bankrupt to keep usual and proper books of account for three years preceding his bankruptcy a condition of not releasing the bankrupt from his liabilities; yet, in Ireland, imperfectly kept books will be taken into account upon application by traders for a certificate of conformity, the words of the certificate being "having regard to the conformity of the bankrupt to the law of bankruptcy and to his conduct as a trader". It would perhaps be not legitimate to infer that, although the bankrupt's unjustifiable extravagance in living and gambling is not expressly rendered a condition for refusing to release a debtor from his liabilities by the Irish law, that therefore the latter is less stringent than English bankruptcy law, as even trading without capital, without any charge of dishonesty or concealment, constitutes a ground for the suspension of a certificate of conformity in Ireland (*Re M. Neillage*, 3 I. L. J. R. 588).

It appears to constitute the only difference between the effect of a certificate of conformity under s. 58 of the Bankruptcy (Ireland) Amendment Act 1872, and the effect of an order of discharge under s. 30 of the English Act of 1883 and s. 10 of the Act of 1890, that a certificate of conformity under the former Act releases a debtor from liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause. In England, an order of discharge, by express enactment, does not release a bankrupt from any liabilities of the above nature, though the Court has, by the terms of the enactment, a discretionary power of releasing the bankrupt conditionally from such liabilities (Bankruptcy Act 1890, s. 10).

Disqualifications of Bankrupt. As to disqualifications of bankruptcy see the Debtors Act (Ireland) 1872, s. 20, and The Bankruptcy (Ireland) Amendment Act, 1872, ss. 40—44. Mayors, aldermen, and town councillors are disqualified from acting either by being declared bankrupt or by having arranged or compounded

with their creditors. A town commissioner acting under the Towns Improvement and Commissioners Clauses Acts is not disqualified from acting by being declared a bankrupt in Ireland. Privilege of Parliament does not prevent an adjudication in bankruptcy. By s. 41 of the Bankruptcy (Ireland) Amendment Act 1872, a member of the House of Commons who is adjudged bankrupt is incapable of sitting and voting for a year from the date of the order of adjudication; but this provision is extended by section 32 (an enactment that applies to all parts of the United Kingdom) of the Bankruptcy Act 1883, which renders a person who has been adjudged bankrupt incapable from being elected to or sitting or voting in the House of Commons, at least till he has procured his discharge or certificate of conformity. On a certificate of a Bankruptcy Court in Ireland being presented to the Speaker, the seat of the member certified to have been adjudged bankrupt becomes vacant. In the ensuing recess, the Speaker issues a new writ in the room of the member whose seat has so become vacant. The enactment of the English Bankruptcy Act of 1883, which applies to all parts of the United Kingdom, implicitly prohibits a debtor in Ireland who has been adjudged bankrupt from sitting or voting in the House of Lords, or from being elected as an Irish representative peer. This enactment also prevents a debtor who has been adjudged bankrupt in Ireland from:

1. Being appointed or acting as a justice of the peace.
2. Being elected to or holding the office of mayor, alderman, or councillor; and
3. From being elected to or holding or exercising the office of guardian of the poor.

V. Proof of Debts and Administration of Property.

Proof of Debts. As regards the description of debts provable in bankruptcy, the material difference between the Irish and English bankruptcy law is that under s. 46 of the Bankruptcy (Ireland) Amendment Act of 1872, unliquidated or uncertain claims arising from contract are not provable unless the breach of contract occurs before adjudication. By the 37th section of the principal Act of 1883, a claim for unliquidated damages is provable in England, according to the authoritative opinion of Vaughan Williams, L. J., whether the breach has or has not or could not have occurred before the discharge of the debtor (Williams on Bankruptcy; p. 129). The enactment (s. 46) in the Irish Bankruptcy Act of 1872 is copied from s. 153 of the English Bankruptcy Act of 1861, and according to a weighty opinion, the effect of the latter enactment is that a claim for unliquidated damages arising from contract was not provable in bankruptcy unless and until the damages had been assessed (Williams on Bankruptcy; p. 129). But all that seems necessary to render such a claim provable under section 46 of the Irish Act of 1872 is that a breach of contract should have occurred (Kisbey's Law and Practice of Bankruptcy in Ireland, p. 152). In concluding whether or not a debt is provable in Ireland when it is provable by the present law in England, it must be remembered that two distinct and independent tendencies determine the question. The first is that while the Irish bankruptcy law is indubitably modelled on English bankruptcy law as it was in force at the time, the principal English Act of 1883 was passed subsequently to the last statute — i. e. that of 1872 — declaring the substantive and general law of bankruptcy in Ireland. Another tendency that has a determining influence on the question whether a debt provable by the present law in England is provable in Ireland is that since 1827 a distinct tendency to admit unliquidated claims in proof in bankruptcy proceedings is discernible; and in some respects even the Irish Act of 1857 has, even where not amended, shewn itself sufficiently elastic to reflect the continuous tendencies of the substantive law of bankruptcy in England.

As regards the provision that where there are mutual credits and set-off, only the balance of the account can be either claimed or paid in bankruptcy, there can be no doubt that the right of set-off is more restricted in Irish than in English bankruptcy law, as the latter extends the right of set-off to "mutual dealings" (Bankruptcy Act 1883, s. 38; Irish Bankrupt and Insolvent Act 1857, s. 25, Kisbey's Law and Practice of Bankruptcy in Ireland; p. 324). The provision that a person who has given credit to a debtor is not entitled to the right of set-off after notice of an act of bankruptcy is the same in principle in both

countries, notwithstanding the absurd omission of the proviso that the act of bankruptcy must be one that is available against the debtor in s. 251 of the Irish Bankrupt and Insolvent Act 1857. But it must be remembered that an act of bankruptcy remains available against a debtor for six months in Ireland, and not merely three months as in England (Kisbey's Law and Practice of Bankruptcy in Ireland; p. 326; Bankruptcy Act 1883; s. 6). The following sections of the Irish Bankrupt and Insolvent Act 1857, and of the Bankruptcy (Ireland) Amendment Act 1872, confer the right to prove for debts or liabilities of special character. Section 45 (1872). For unpaid instalments of a debt which the debtor shall have contracted to pay by instalments. Section 46 (1872). For unliquidated damages by reason of any contract. Section 47 (1872). For premiums on policies of insurance or other periodical sums which the debtor was bound to pay or to indemnify the creditor against paying. Section 48 (1872). In respect of distinct contracts by the bankrupt as member of two or more firms or as a sole contractor or member of a firm. Section 49 (1872). For parochial and local rates and income tax, to be paid in priority. Section 249 (1857). For wages or salary of servants or clerks. See Preferential Payments in Bankruptcy (Ireland) Act 1889. The provisions of s. 4 of this Act are in the *ipsissima verba* of section 1 of the English Act, except that, in the Irish Act, the liability to pay debts in full for a preceding period accrues at the date of the order of adjudication. In the English Act, the relation back dates from the date of the receiving order. The rule as to priority is more restricted in Ireland than in England; as, in England, the enactment of 1888 has been construed so as to give the servant wages for four months from the date of the presentation of the petition when the Official Receiver may act as interim receiver, though the receiving order may not actually be made till long after. (Williams on Bankruptcy, p. 166). Section 252 (1857). For debts due but not payable at the time of the bankruptcy. Section 253 (1857). By sureties after paying debts secured by them before the petition in bankruptcy. Section 254 (1857). By obligees in bottomry bonds, and insurers on ships or goods. Section 255 (1857). By annuity creditors of the bankrupt for the value of the annuity. Section 257 (1857). For the value of a debt payable on a contingency. Section 259 (1857). By owner of goods pledged by the bankrupt agent of such owner. Section 260 (1857). For interest upon debts provable. Section 261 (1857). For costs of judgment obtained before the bankruptcy.

Power of landlord to distrain for Rent. See Preferential Payments in Bankruptcy (Ireland) Act 1889, s. 4, ss. 4; The Bankruptcy (Ireland) Amendment Act, 1872, sect. 68; Irish Bankrupt and Insolvent Act 1857, sections 270, 321. There is now no material difference between Irish and English bankruptcy law on this subject, though in Ireland a distress made after an act of bankruptcy is not available for more than six months' rent accrued prior to the day of the filing of the petition; and twelve months was the period limited by the principal English Act. But the law in England in this respect was altered by the Bankruptcy Act, 1890, s. 28.

Property available for payment of debts. Relation back of the trustee's title in Ireland differs from relation in the law of England both in the period limited (six and not three months), and in the date from which it is reckoned (the date of the actual adjudication and not the date of the presentation of the petition) (Kisbey's Law and Practice of Bankruptcy in Ireland, pp. 326, 391. The Bankruptcy (Ireland) Amendment Act 1872, s. 23; and cf. The Bankruptcy Act 1883, s. 43.) The Irish bankruptcy law contains no express enactment that property held by the bankrupt on trust for any other person shall not pass to the trustee, and in this respect, exhibits a material variance from the English Act which contains the exception (Bankruptcy Act 1883; s. 44). But property held in trust by the bankrupt has always been held not to pass to the trustee when it is the case of either an express trust or trust *virtute officii* (*Finch v. Keelay*, 1 T. R. 619; *Copeman v. Gallant*, 1 P. Wms. 314). Very difficult questions may arise, even under the English Act of 1883, with regard to specific appropriations, though by s. 44, the Act enacts that property held by the bankrupt on trust for any other person shall not pass to the trustee (Williams on Bankruptcy, p. 200.) There may be cases where specific appropriations, not amounting to trusts or equitable interests, pass to the trustee in England. The value of "the excepted property", which is not liable to be sold or disposed of in the bankruptcy, consisting of the bankrupt's furniture, tools of his trade etc., is the same in Irish as in English bankruptcy law, viz £ 20. The ano-

maly that occurs by English bankruptcy law, when the sheriff sells under an execution all the execution debtor's property and is only required to reserve tools etc. up to the value of £5 under 8 & 9 Vict. c. 127, s. 8, although by section 44 (2) of the Bankruptcy Act 1883 the tools etc. of a bankrupt to the value of £20 are excepted from the property passing to the trustee, cannot occur in Ireland. By section 298 of the Irish Bankruptcy and Insolvent Act 1857, the excepted articles "shall not be subject to be taken in execution at the suit of any creditor entitled to prove under the bankruptcy". The anomaly is thus completely avoided. The Irish enactment also contains other safeguards, ex. gr. the taking of an inventory of the excepted articles etc., which are not found in the Bankruptcy Act 1883.

Realization of Property. On this subject the material variance between the Irish and English bankruptcy law appears to be that by the former the trustee may disclaim a lease without the leave of the Court. By one of the vesting sections of the Irish Bankrupt and Insolvent Act 1857, i. e. s. 271, even the assignees may disclaim a lease without the leave of the Court, though on the application of a person entitled, the Court may order them to elect.

Distribution of Dividends. See the Trustee Clauses of the Bankruptcy (Ireland) Amendment Act, 1872, s. 107 *et seq.*, Irish Bankrupt and Insolvent Act 1857, s. 289 *et seq.* Rules of Court, 153, 154, 155, 210 *et seq.* By the Trustee Clauses of the Irish Act of 1872, a trustee is not bound to declare a dividend for six months (and not four months as by s. 58 of the Bankruptcy Act of 1883), though, at the expiration of that period, he must summon a meeting of the creditors, and explain to them his reasons for not declaring the same, a requisition that corresponds to that in the English Act. A final dividend must be declared in Ireland within eighteen months. The exact amount of the allowance made by the Court to a bankrupt who has obtained his certificate of conformity is fixed by section 303 of the Irish Bankrupt and Insolvent Act, 1857 at 5 p. e. and not exceeding £400 as soon as 10s. is paid in the pound; $7\frac{1}{2}$ per cent. and not exceeding £500 if $12\frac{6}{d}$, etc. No action can be brought against the trustee for dividends; the bankrupt is entitled to any surplus remaining after payment of his creditors, and a creditor who has not proved his debt before the declaration of a dividend is entitled to be paid any dividend he may have failed to receive out of moneys in the hands of the trustee, but not so as to disturb any dividend already declared. By the Irish Rules of Court, No. 260, in every adjudication against partners, the Official Assignee must keep distinct accounts of the joint and separate estates; but on the subject of the distribution of property and the payment of joint and separate dividends, the Irish bankruptcy law does not contain any express enactment analogous to section 59 (1) of the Bankruptcy Act 1883, that the creditors of the joint estate shall not receive any dividend out of the separate property of a partner until all the separate creditors have been paid in full. But by the Irish Rules of Court, No. 93, it is provided that the separate estate shall be applied in the first instance to the satisfaction of the debts of the separate creditors.

VI. Official Assignees.

The Official Assignees are appointed by the Lord Chancellor of Ireland. They must not be merchants, brokers, or accountants, and must give security (Irish Bankrupt and Insolvent Act 1857, s. 59). The general duties of Official Assignees are to be assignees of each bankrupt's estate and effects, and to possess and to receive the real and personal estate and effects of every bankrupt, and the income and proceeds thereof (Irish Bankrupt and Insolvent Act 1857, s. 60). The duties of an Official Assignee in Ireland correspond generally to the duties of the Official Receiver in England. Both possess and receive the bankrupt's estate alone. Both may act as trustee on release of the trustee. But the Official Assignee in Ireland may be required to act with the creditors' assignee, and does not preside as Chairman at the first general meeting of the creditors. In both these respects the position of the Official Assignee in Ireland is differentiated from that of the Official Receiver in England. The Report of the Official Assignee in Ireland (Rules of Court; No. 233), apparently does not extend to a definite recommendation for the prosecution of the debtor, while in England the Official Receiver has a power, conferred on him by express enactment (Bankruptcy Act, 1883, s. 69 (1)), of reporting to the Court whether there are reasonable grounds for believing that the debtor

has committed a misdemeanour under the Debtors Act 1869. The Official Assignee in Ireland is, however, bound to report to the Court how far the bankrupt has performed the duties imposed upon him by the statute.

VII. Trustees in Bankruptcy.

As to the remuneration of a trustee see the Trustee Clauses of the Bankruptcy (Ireland) Amendment Act 1872, s. 103; Rules of Court 201. If a trustee is a solicitor, he is entitled to remuneration, including charges for professional services. At the termination of the trusteeship, the creditors may, though they are not bound to, award the trustee remuneration. But if they do not the trustee is allowed his "proper expenses" out of the bankrupt's estate by the Chief Registrar. There is no rate or scale of remuneration fixed either by the Acts or rules in Ireland (The Bankruptcy (Ireland) Amendment Act 1872, Trustee Clauses; s. 88, ss. 2; s. 103; Rules 194). In this last respect Irish bankruptcy law differs from English bankruptcy law. As to costs, cf. Irish Bankruptcy and Insolvent Act 1857, s. 51. As to Receipt, Payment, Accounts, Audit; cf. ss. 286—291; Rules of Court 76. As to release of trustee; Trustee Clauses of the Bankruptcy (Ireland) Amendment Act 1872, s. 116, Rules of Court, 201, 228. As to the official name of the trustee, cf. Trustee Clauses of the Bankruptcy (Ireland) Amendment Act 1872, s. 121, ss. 6. As to the appointment and removal of the trustee cf. The Bankruptcy (Ireland) Amendment Act 1872, s. 88 ss. 2 (appointment by resolution at first meeting of creditors), s. 90 (Order) s. 91 (vesting section). Trustee Clauses, s. 121 (joint trustees; cf. English Bankruptcy Act, 1883, s. 84); irregularity in appointment, waiver of; cf. The Bankruptcy (Ireland) Amendment Act, 1872, s. 121, ss. 13; Rules of Court 192; provision for appointment of new trustee in place of a trustee adjudged bankrupt, The Bankruptcy (Ireland) Amendment Act 1872, s. 121. As to the removal and release of a trustee; Rules of Court 200, 201 *et seq.* There is no limitation to the voting power of a trustee in the Irish Bankruptcy Acts and Rules of Court similar to that contained in s. 88 of the principal English Bankruptcy Act of 1883. As to Control over Trustee; cf. Rules of Court, 219—231. In Ireland the Chief Registrar is the Comptroller of trustees and of the books and accounts to be kept by trustees. This constitutes a material variance from English bankruptcy law, as in England the Board of Trade exercises control over trustees (Bankruptcy Act 1883, s. 91).

VIII. Constitution, Procedure and Powers of Court.

Till 1897, there was an independent Court of Bankruptcy in Ireland constituted under s. 4 of the Irish Bankrupt and Insolvent Act 1857, but by the Supreme Court of Judicature (Ireland) (No. 2) Act, 1897, the Court of Bankruptcy in Ireland was consolidated with the Supreme Court. By section 4 (1) of this Act it was enacted that all causes and matters in bankruptcy shall be ordinarily disposed of by or under the direction of one of the judges of the King's Bench Division, who is invested with the jurisdiction and authority previously exercised by the judges of the Court of Bankruptcy. Appeals lie, as formerly, to the Court of Appeal in Chancery, under section 29 of the Irish Bankrupt and Insolvent Act 1857. The Local Bankruptcy (Ireland) Act, 1888, conferred a power on the executive to establish local Bankruptcy Courts by Order in Council. The extent of the jurisdiction is determined on the principle of the debtor's residence, without regard to the amount involved. This Act established at once local Bankruptcy Courts at Cork and Belfast to be presided over by the Recorders of those towns. As to jurisdiction in chambers in bankruptcy see s. 4 (6) of the Supreme Court of Judicature (Ireland) (No. 2) Act 1897. There may be some doubt whether a judgment debtor's summons is bankruptcy business in Ireland, as it was decided in *In re Marquess* 8 L. J. R. 77, that it is not to be taken that the interpretation clause of the Debtors Act, 1872, is incorporated with the Bankrupt Act by any express word. As to General Powers of the Bankruptcy Court in Ireland see section 24 of the Irish Bankrupt and Insolvent Act 1857; the Bankruptcy (Ireland) Amendment Act 1872 s. 66. By the Act of 1857, the condition necessary to enable the Court of Bankruptcy to adjudicate in the case of a stranger to the bankruptcy was that he should submit to the jurisdiction. Under the 66th section of the Act of 1872, a new condition is introduced, namely, that the decision shall be one required for the distri-

bution of the property. The Act of 1857 looked to the persons between whom, and the Act of 1872 to the subject-matter in respect of which, the controversy arose. The Irish Bankruptcy Courts have exclusive jurisdiction over traders trading exclusively in Ireland (The Irish Bankruptcy and Insolvency Act 1857, s. 31). A foreign creditor, residing out of the jurisdiction of the Court of Bankruptcy, by proving a debt in a bankruptcy or liquidation, brings himself within the general jurisdiction of the Court as to the administration of the estate, just as if he were residing within it. An order can therefore be made on him to restore property of the bankrupt or debtor improperly in his possession (*Ex p. Robertson* (1875), L. R. 20 Eq. 733).

A warrant of the Irish Courts may be enforced in England or Scotland when backed by a Justice of the Peace in England (Irish Bankrupt and Insolvent Act 1857, s. 73) or by any Judge Ordinary or Justice of the Peace in Scotland (*Ibid.* s. 74). But a debtor's summons cannot be served out of the jurisdiction (*In re O'Loughlen* (1871), L. R. 6 Ch. 406).

IX. Miscellaneous Provisions.

Rules of Court. Rules of Court are made in Ireland by the Lord Lieutenant on the recommendation of a majority of the judges of the Supreme Court and certain persons appointed by the Lord Chancellor (Supreme Court of Judicature (Ireland) (No. 2) Act, 1897, s. 12). The English Bankruptcy Rules are made, revoked, or altered by the Lord Chancellor, with the concurrence of the President of the Board of Trade.

Fees, Salaries, Expenditure and Returns. A fee of one shilling and no more is payable for search (Irish Bankrupt and Insolvent Act 1857, s. 337). No fees are payable save as the Act directs, and an officer wrongfully taking a fee is liable to a fine of £500 (Irish Bankrupt and Insolvent Act 1857, s. 395). As to salaries see the Bankruptcy (Ireland) Amendment Act 1872, s. 51; Irish Bankrupt and Insolvent Act 1857 (these are provisions regarding debtors' salaries) — Rule 165, as to when Official Assignee is in receipt of salary. By s. 68 of the Irish Bankrupt and Insolvent Act 1857, the Official Assignee is required annually to furnish Parliament with particulars, in a form contained in Schedule B., of the winding-up of every estate. These returns are to be certified by the Chief Registrar.

Evidence etc. The Lord Chancellor or the Court may, in all matters within their respective jurisdictions, take the whole or any part of the evidence either *via voce* on oath, or by interrogatories in writing or upon affidavit (Irish Bankrupt and Insolvent Act 1857, s. 369). The certificate of conformity is evidence of bankruptcy and of validity of proceedings (Irish Bankrupt and Insolvent Act 1857, s. 148; The Bankruptcy (Ireland) Amendment Act 1872, s. 58). Notice must be given of evidence to the opposite party in the case of proceedings by charge and discharge. Rules of Court, 57. Proceedings purporting to be sealed with the seal of the Court are receivable in evidence (Irish Bankrupt and Insolvent Act 1857, s. 361). A copy of a declaration of insolvency under the Irish Bankrupt and Insolvent Act 1857, purporting to be under the seal of the Court, and to be certified by a Registrar of the Court as a true copy, will be received as evidence of such declaration (Irish Bankrupt and Insolvent Act 1857, s. 363). A copy of the Dublin Gazette, and of any newspaper containing any such advertisement as is by this Act (i. e. the Act of 1857) directed or authorized to be made therein respectively shall be evidence of any matter therein contained, and of which notice is by this Act directed or authorized to be given by such advertisement (*Ibid.* s. 364). On death of a witness an office deposition or copy thereof is evidence (*Ibid.* s. 365). The certificate given to the trustee by the Court is conclusive evidence of the appointment of the trustee, and such appointment dates from the date of the certificate (The Bankruptcy (Ireland) Amendment Act 1872, s. 90). There is no appeal given to a trustee from the Chief Registrar to the Court in Ireland analogous to the appeal from a decision of the Board of Trade to the High Court in England. In Ireland the Chief Registrar does not decide against the trustee, he merely reports. The trustee must be given notice, and is heard before the Court. Rules of Court, 230. A seizure of goods under an *elegit* is an obsolete form of execution in Ireland, though it was formerly resorted to in England to evade the payment of the proceeds of an execution to trustees. A writ of *elegit* does not now extend to goods in England,

and therefore a former variance between English and Irish bankruptcy law has disappeared.

Punishment of Fraudulent Debtors. There is no variance between the liability of fraudulent debtors in Irish bankruptcy law and English bankruptcy law, but by s. 13 (4) of the Debtors Act (Ireland) 1872, third persons who wilfully conceal any real or personal estate of any bankrupt or arranging debtor for forty-two days after the filing of the petition of bankruptcy or for arrangement, without discovering the same to the Court, are guilty of a misdemeanour, punishable by a year's imprisonment, with or without hard labour. The Debtors Act 1869 (the corresponding English enactment) does not contain this offence, but by section 27 of the principal Act of 1883, such a person may be apprehended and punished for contempt. The only verbal differences between the Debtors Act (Ireland) 1872 and the Debtors Act, 1869, are due to the fact that in Ireland a person can petition for arrangement, while in England he applies to the Court for the approval of a composition. The most serious offence that a bankrupt can commit against the bankruptcy laws in either country is that of absconding with property out of the country to the amount of £20 or upwards with intent to defraud his creditors. This is made a felony, both by the Debtors Act, 1869, s. 12 and by the Debtors Act (Ireland) 1872, s. 12. The maximum punishment is also the same in the two enactments viz., two years' imprisonment with hard labour. The Debtors (Ireland) Act 1872, supplied an omission in the Debtors Act 1869, by which a person adjudged a bankrupt, who had petitioned for his own bankruptcy, escaped all liability to criminal proceedings for several misdemeanours. The Debtors (Ireland) Act 1872, of course merely supplied this defect as far as Ireland was concerned. But, after the omission was pointed out in *Re Burden* (1888), 21 Q. B. D., the lacunæ in section 11 of the Debtors Act 1869, were supplied by section 26 of the Bankruptcy Act, 1890.

Commercial Treaties and Conventions.

Introduction.

It is "the King's prerogative to make treaties, leagues and alliances with foreign states and princes. For it is by the law of nations essential to the goodness of a league, that it be made by the sovereign power; and then it is binding upon the whole community: and in England the sovereign power, *quoad hoc*, is vested in the person of the King"¹). It is conceivable that the prerogative might be exercised to make a treaty forbidding any particular class of commercial dealings between two countries of which the effects would be to render it illegal for a British subject to enter into such commercial transactions. Moreover the King has an absolute discretionary power to recall his subjects from foreign parts and by virtue of that prerogative might prevent them from personally trading abroad²). On the other hand, "the freedom of trade and the general inability of the King to restrain it, or to exercise any discretionary power on the liberty of the subject in this respect, by virtue of his common law prerogatives, and independently of any legislative authority, appears to be clear both on sound constitutional principles and from authorities of the first weight and character"³). Treaties have been made from time immemorial to encourage and assist the enterprise of the individual. The activities of England in this direction developed during the seventeenth century. The earliest commercial treaty still in force is that with Portugal made in 1642. Primarily the commercial treaties were only of concern to the contracting parties. But the ramifications and extensions of business enterprise have resulted in making treaties an important factor in rivalry between great corporations and nations. Chitty contended that "those commercial treaties alone are in themselves just and commendable which pay to the general interest of mankind as great a degree of respect as is possible and reasonable in the particular case"⁴). The inevitable tendency, however, for each nation to negotiate in its own interest, in combination with the commercial development of the self-governing Dominions of the British Empire, has led to a new departure in recent years. The prerogative of the Crown has only been exercised in accordance with the advice of the Ministers, but in the case of some of the self-governing Dominions it is now their Ministers and not those in England who negotiate the terms of treaties applicable to their particular Dominions with foreign powers.

Formerly it was customary for all treaties to bind the colonies and in some cases, for example, the commercial treaty of 1876 with Austria-Hungary, they did so in express terms. The first treaty from which the self-governing Dominions were excepted, apparently was that with Montenegro in 1882. A treaty with Italy in 1883 permitted them to adhere within one year and other treaties have contained a similar provision. The right of withdrawal from existing treaties was first negotiated in 1899 with Uruguay. This differentiation of treatment is peculiar to commercial treaties, since it is clear that political questions cannot be treated differently in one part of the Empire from another while it retains any unity⁵).

Abyssinia.	Treaty of Commerce.	4th May 1897.
Afghanistan.	Convention with Russia, art. 4.	31st August 1907.
Argentine Republic.	Treaty of Amity, Commerce and Navigation.	2nd February 1825.
Austria-Hungary.	Treaty of Navigation.	30th April 1868.
	Treaty of Commerce.	5th December 1876

¹) Blackstone's Commentaries, I. 257.

²) See Chitty, Prerogative of the Crown, 170; Chalmers, "Opinions" Vol. 2. 342, 337, and series of agreements respecting the sale of opium, American Journal of International Law Vol. 3, Documents 253; Agreements between United Kingdom and China May 8th 1911 and International Convention 23rd Jan. 1912.

³) Ibid. p. 163.

⁴) Commercial Law, Vol. I. 39.

⁵) For a full discussion of this subject see Keith, Responsible Government in the Dominions, Vol. 3 p. 1101.

	Declaration prolonging treaty indefinitely.	26th November 1877.
	Declaration for the admission duty free of commercial travellers' samples.	15th February 1887.
Belgium.	Treaty of Commerce and Navigation.	23rd July 1862.
	Convention relative to Joint Stock Companies.	13th November 1862.
	Notes terminating Commercial Treaty 1862.	July, Aug. 1897.
	Notes establishing <i>modus vivendi</i> .	27th July 1898.
	Application of Commercial <i>modus vivendi</i> to India.	30th August 1898.
	Application of Commercial <i>modus vivendi</i> to Malta.	5th November 1898.
	Application of Commercial <i>modus vivendi</i> to Cyprus.	25th November 1898.
	Application of Commercial <i>modus vivendi</i> to Newfoundland.	6th December 1896.
	Application of Commercial <i>modus vivendi</i> to Ceylon.	5th January 1899.
	Application of Commercial <i>modus vivendi</i> to Lagos.	5th January 1899.
	Application of Commercial <i>modus vivendi</i> to Queensland.	6th February 1899.
	Agreement respecting commercial Travellers' samples.	10th November 1906.
Bolivia.	Treaty of Amity, Commerce and Navigation.	5th June 1837.
	Treaty of commerce. By Art XV the Treaty does not apply to any of His Britannic Majesty's Colonies or Possessions unless notice is given to that effect within one year of the Exchange of ratifications.	14th August 1911.
	Treaty of Amity, Commerce and Navigation.	29th September 1840.
Bulgaria.	Treaty of Commerce.	9th December 1905.
	Additional Agreement.	9th February 1909.
By Art. XX, the Convention is not applicable "to any Colony, Possession or Protectorate of His Britannic Majesty beyond the seas, unless notice to that effect shall have been given on behalf of any such Colony, Possession or Protectorate". The following have notified their accession: Bahamas, Barbados, Basutoland, Bechuanaland Protectorate, Bermuda, British Guiana, British Honduras, Ceylon, Cyprus, East Africa Protectorate, Falkland Islands, Federated Malay States, Fiji, Gambia, Gilbert and Ellice Islands Protectorate, Gold Coast, Grenada, Hongkong, Jamaica, Leeward Islands, Malta, Mauritius, Northern Nigeria, Nyasaland Protectorate, St. Helena, St. Lucia, St. Vincent, Seychelles, Sierra Leone, Solomon Islands Protectorate, Somaliland Protectorate, Southern Nigeria, Southern Rhodesia, Straits Settlements, Trinidad and Tobago, Uganda Protectorate, Weihaiwei.		
China.	Treaty of Commerce and Navigation.	29th August 1842.
	Treaty of Peace, Friendship and Commerce.	26th June 1858.
	Convention in ratification of Treaty 1858.	24th October 1860.
	Agreement for arrangement of official intercourse.	13th September 1876.
	Treaty respecting commercial relations.	5th September 1902.
	Regulations respecting trade in Tibet.	20th April 1908.
Colombia.	Treaty of Friendship, Commerce and Navigation.	16th February 1866.

Congo.	Convention.	16th December 1884.
Costa Rica.	Treaty of Friendship, Commerce and Navigation.	27th November 1849.
	Notification of the denunciation by Costa Rica of Articles 5, 6, and 7.	7th December 1896.
Denmark.	Treaty of Peace and Commerce.	13th Feb. 1661.
	Treaty.	11th July 1670.
	Treaty of Peace.	14th January 1814.
	Convention of Commerce.	16th June 1824.
	Declaration agreeing to the termination of the Commercial Treaties in their application to the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Colony of Newfoundland on giving twelve months' notice.	9th May 1912.
Egypt.	Commercial Convention.	29th October 1889.
By Article XV, the Convention is applicable as far as the laws permit, to all the Colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to: The Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, New Zealand. By a proviso those possessions were enabled to notify their accession. Newfoundland, Queensland, Tasmania and Natal did so, December 4th, 1890, and New Zealand, July 31st 1891.		
	Additional Agreement.	16th December 1907.
France.	Convention of Commerce and Navigation.	26th January 1826.
	Additional articles relating to the colonies.	26th January 1826.
	Commercial and Maritime Convention.	28th February 1882.
	Notes respecting the commercial relations between the Colony of Sierra Leone and the neighbouring French Possessions.	22nd January 1895.
	Convention relating to Tunis.	18th September 1897.
	Convention as to possessions on the Niger.	14th June 1898.
	Agreement respecting commercial relations between France and Zanzibar.	27th June 1901.
	Convention respecting commercial relations between France and Jamaica.	8th August 1902.
	Convention respecting commercial relations between France and the Seychelles Islands.	16th April 1902.
	Convention respecting commercial relations between France and Ceylon.	19th February 1903.
	Convention respecting commercial relations between France and India.	19th February 1903.
	Convention respecting commercial relations between France and the British Protectorates of East Africa, Central Africa and Uganda.	23rd February 1903.
	Convention respecting commercial relations between France and Barbados.	9th January 1907.
	Convention regulating the Commercial Relations between Canada and France.	19th September 1907.

	Supplementary convention respecting the commercial relations between Canada and France.	23rd January 1909.
	Protocol permitting the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and Newfoundland to terminate the application of the additional articles of the Convention of 1826 after one year's notice and agreeing that they are not applicable to the Dominion of Canada.	6th July 1912.
Germany.	Declaration for the admission Duty free of Patterns and Samples imported by Commercial Travellers.	1st April 1869.
	Temporary arrangement regulating commercial relations.	11th June 1898.
	Prolongation.	7th July 1899.
	Notification respecting commercial relations with the British Empire except Canada.	11th June 1901.
	Notification respecting commercial relations with the British Empire.	22nd December 1905.
	Notice respecting commercial relations with the British Empire.	19th December 1907.
	Supplementary Agreement respecting commercial Travellers' Samples.	10th March 1908.
Greece.	Treaty of Commerce and Navigation.	10th November 1886.
	Agreement.	28th March 1890.
	Declaration correcting an error in the Annex to the Agreement.	16th June 1890.
	Declaration.	10, 23rd Nov. 1904.
	Additional Declaration.	4/17th May 1905.
Honduras.	Treaty of Commerce and Navigation.	21st January 1887.
	Explanatory Protocol.	3rd February 1900.
<p>By Art. XIV the stipulations of the Treaty applied to all the Colonies and foreign possessions of Her Britannic Majesty except India, the Dominion of Canada, Newfoundland, New South Wales, Victoria, South Australia, Western Australia, Queensland, Tasmania, New Zealand, the Cape, and Natal. By explanatory Protocol dated February 3rd 1900 the stipulations of the Treaty were not to be applicable to any of the Colonies or foreign possessions unless notice to that effect was given within one year from the date of ratification. Accordingly the Commonwealth of Australia, British Honduras, Papua, Ceylon, Guiana, India with certain reservations set forth in the explanatory protocol, Southern Nigeria, Mauritius, Northern Nigeria, Sierra Leone, and Straits Settlements, acceded to its provisions.</p>		
	Notes extending operation of the Treaty of Commerce.	5 19th April 1911. 3 8th April 1912.
Italy.	Declaration relative to Joint Stock Companies.	26th November 1867.
	Treaty of Commerce and Navigation.	15th June 1883.
<p>By Art. XIX, the Treaty was applicable to all the Colonies and Foreign Possessions except India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, South Australia, Western Australia and New Zealand, with a proviso that they might notify their accession within one year. Natal, Newfoundland, New South Wales, New Zealand, Queensland, Tasmania, Victoria and Western Australia availed themselves of the proviso.</p>		
	Agreement between Great Britain and Italy respecting Commercial Travellers' Samples.	30th May 1908.

Japan.	Treaty and Protocol of Commerce and Navigation.	16th July 1894.
	Supplementary Convention.	16th July 1895.
	Accession of Queensland to the Commercial Treaty of July 16th 1894.	16th March 1897.
	Convention respecting commercial relations between India and Japan.	29th August 1904.
	Convention respecting commercial relations between Canada and Japan.	31st January 1906.
	Treaty of Commerce and Navigation.	3rd April 1911.
	Notes prolonging for two years Art. 5 of the Treaty of July 16th 1894 as regards the Dominion of Canada ¹).	7th July 1911.
	The accession of Newfoundland to the Treaty of 1911 was notified 30th Dec. 1911, and of Ceylon and the Straits Settlements	7th March 1912.
Liberia.	Treaty of Friendship and Commerce.	21st November 1848.
	Agreement in modification.	23rd July 1908.
Mexico.	Treaty of Commerce and Navigation.	27th November 1888.
	The withdrawal of the Commonwealth of Australia, to take effect one year later, was notified.	17 July 1911.
Montenegro.	Treaty of Friendship, Commerce and Navigation.	21st January 1882.
By Art. XIV, the Treaty applies to all the Colonies and foreign possessions except the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia and New Zealand.		
	Notification of Prolongation.	6th July 1900.
	Convention of Commerce and Navigation.	11th January 1910.
Morocco.	General Treaty.	9th December 1856.
	Convention of Commerce and Navigation.	9th December 1856.
Netherlands.	Treaty of Commerce and Navigation.	27th October 1837.
	Convention of Navigation.	27th March 1851.
Nicaragua.	Treaty of Commerce and Navigation.	28th July 1905.
By Art. II. The Treaty applies only to Colonies, Possessions or Protectorates which notified their accession within one year of its ratification. Notice was given on 9th June 1906 on behalf of the following: Newfoundland, Bahamas, Barbados, Bermuda, British Guiana, British Honduras, Ceylon, Cyprus, East Africa Protectorate, Falkland Islands, Federated Malay States, Fiji, Gambia, Gilbert and Ellice Islands Protectorate, Gold Coast, Grenada, Hongkong, Jamaica, Leeward Islands, Malta, Mauritius, Northern Nigeria, Nyasaland Protectorate, St. Helena, St. Lucia, St. Vincent, Seychelles, Sierra Leone, Solomon Islands Protectorate, Somaliland Protectorate, Southern Nigeria, Straits Settlements, Trinidad and Tobago, Uganda Protectorate, and Weihaiwei.		
Norway.	Treaty of Commerce and Navigation.	18th March 1826.
Paraguay.	Treaty of Friendship, Commerce and Navigation.	16th October 1884.
	Protocol declaring Treaty not applicable to India	10th May 1886.
	Agreement notifying accession of Newfoundland, Victoria, Western Australia, Tasmania, Queensland, Cape of Good Hope and Natal.	19th July 1890.
	Declaration in amendment.	14th March 1908.

¹) The Dominion of Canada passed a statute 1 & 2 Geo. V. c. 7 to give effect to this agreement.

Persia.	Treaty of Commerce.	28th October 1841.
	The withdrawal of Queensland, Tasmania, Victoria and Western Australia from the Treaty was notified.	25th August 1911.
	Treaty of Trade.	4th March 1857.
	Commercial Convention.	9th February 1903.
	Notes exchanged relating to the Status of the Federated Malay States as a British Colony with regard to the Anglo-Persian Declaration of February 9th 1903.	17th May and 21st June 1904.
Peru.	Treaty of Friendship, Commerce and Navigation.	10th April 1850.
Portugal.	Treaty of Peace and Commerce.	29th January 1642.
	Treaty of Peace and Alliance ¹⁾ .	10th July 1654.
	Treaty relating to the Portuguese Colonies.	23rd June 1661.
	Treaty of Alliance and Commerce.	16th May 1703.
	Treaty of Friendship and Commerce.	27th December 1703.
	Decree respecting the trade with Portuguese Colonies.	5th June 1844.
	Treaty of Friendship and Commerce between the South African Republic, now the Transvaal State, and the King of Portugal.	11th December 1875.
	Treaty of Commerce with reference to their Indian possessions.	26th December 1878.
Rumania.	Commercial Convention.	31st October 1905.
By Art. XVII, the stipulations of the Treaty do not apply to any of the Colonies, Possessions or Protectorates beyond the Seas unless notice of adhesion is given on their behalf within one year from the exchange of ratifications. The Treaty has been applied to the following: British Honduras, Ceylon, Cyprus, Gold Coast, Hongkong, Leeward Islands, Malta, Northern Nigeria, St. Helena, Seychelles, Sierra Leone, Somaliland, Southern Nigeria, Straits Settlements, Uganda, Weihaiwei.		
Russia.	General Treaty of Peace.	30th March 1856.
	Treaty of Commerce and Navigation.	13th January 1859.
	Agreement respecting the commercial relations between Russia and Zanzibar.	12 24th August 1896.
Servia.	Treaty of Commerce.	17th February 1907.
Art. XIII provides that the stipulations of the Treaty are only applicable to such Colonies, Possessions or Protectorates as signify their accession within one year from the date of the exchange of the ratifications. Use has been made of this provision on behalf of the following: Bahamas, Barbados, Bermuda, British Guiana, British Honduras, Ceylon, Cyprus, East Africa Protectorate, Falkland Islands, Federated Malay States, Fiji, Gambia, Gilbert and Ellice Islands Protectorate, Gold Coast, Grenada, Hongkong, Jamaica, Leeward Islands, Malta, Mauritius, Northern Nigeria, Nyasaland Protectorate, St. Helena, St. Lucia, St. Vincent, Seychelles, Sierra Leone, Solomon Islands, Somaliland, Southern Nigeria, Straits Settlements, Trinidad and Tobago, Uganda, Weihaiwei.		
Siam.	Treaty of Commerce.	20th June 1826.
	Treaty of Commerce.	18th April 1855.
	Agreement of Commerce.	13th May 1856.
	Treaty between the Governments of India and Siam, for promoting commercial intercourse between British	14th January 1874.

¹⁾ In this treaty England agreed for the first time that the flag should carry the cargo. See Phillimore "International Law" III. 323 *et seq.*

	Burmah and the adjoining territories of Chiangmai, Lakon and Lampoonchi belonging to Siam.	
	Treaty for the Promotion of Commerce between British Burmah and the Territories aforesaid.	3rd September 1883.
	Treaty of Commerce.	3rd September 1883.
Spain.	Commercial Agreement.	18th July 1893.
	Notes respecting Commercial relations.	20/29th June 1894.
	Notes respecting Commercial relations.	28th, 29th December 1894.
Sweden.	Treaty of Commerce.	11th April 1654.
	Treaty of Commerce.	17th July 1656.
	Treaty of Commerce.	31st October 1661.
	Treaty of Commerce.	5th February 1766.
	Treaty of Commerce.	18th March 1826.
	Declaration respecting the privileges of Commercial Travellers.	13th October 1883.
	Declaration allowing the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Colony of Newfoundland to withdraw from the Commercial Treaties upon giving one year's notice.	27th November 1911.
Switzerland.	Commercial Treaty.	6th September 1855.
	Agreement respecting Commercial Travellers' Samples.	20th February 1907.
Tibet.	Regulations regarding Trade relative to Sikkim and Tibet.	5th December 1893.
	Convention.	7th September 1904.
	Regulations between Great Britain, China and Tibet respecting Trade.	20th April 1908.
United States of North-America.	Treaty.	24th December 1814.
	Convention.	3rd July 1815.
	"	30th October 1818.
	"	6th August 1827.
Uruguay.	Treaty of Friendship, Commerce and Navigation.	13th November 1885.
<p>By Art. XIV the Treaty applied to all the Colonies and British possessions except India, the Dominion of Canada, Newfoundland, New South Wales, Victoria, South Australia, Western Australia, Queensland, Tasmania, New Zealand, the Cape, and Natal.</p>		
	Convention in renewal of Treaty.	15th July 1899.
<p>It was declared that British Colonies and possessions might adhere to the Convention within six months of its ratification or withdraw by giving six months' notice. The adhesion of the following has been signified: Bahamas, Barbados, Ceylon, Falkland Islands, Gambia, Gold Coast, Hongkong, Lagos (now part of Southern Nigeria), Leeward Islands, Malta, Mauritius, Newfoundland, New Zealand, St. Helena, Seychelles, Sierra Leone, Straits Settlements, and Trinidad.</p>		
Venezuela.	Treaty of Commerce.	18th April 1825.
	Commercial Convention.	29th October 1834.

Appendix.

The Limitation Act, 1623.

21 James I.

Cap. XVI.

An Act for lymytacion of Accions, and for avoyding of Suits in Lawe.

3. And be it further enacted, that all accions of accompt and upon the case, other then such accompts as concerne the trade of merchandize betweene marchant and marchant, their factors or servants, all accions of debt groundd uppon any lending or contract without specialtie, shalbe commenced and sued within the tyme and lymytacion hereafter expressed, and not after (that is to saie) the said accions uppon the case and the said accions for accompt, and the said accions for debt within sixe yeares next after the cause of such accions or suite, and not after

7. Provided neverthelesse, and be it further enacted, that if any person or persons that is or shalbe intituled to any such accions of accompts accions of debts, bee or shalbe at the tyme of any such cause of accion given or accrued, fallen or come within the age of twentie-one yeares, feme covert, non compos mentis, imprisoned or beyond the seas, that then such person or persons shalbe at libertie to bring the same accions, soe as they take the same within such times as are before lymitted, after their coming to or being of full age, discovert, of sane memory, at large and returned from beyond the seas, as other persons having no such impediment should have done.

The Statute of Frauds, 1677.

29 Car. II.

Cap. III.

4. No action shall be brought,—whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

The Sunday Observance Act, 1677.

29 Car. II.

Cap. VII.

An Act for the better Observation of the Lord's Day, commonly called Sunday.

For the better observation and keeping holy the Lord's day, commonly called Sunday, be it enacted that all the laws enacted and in force concerning the observation of the Lord's day, and repairing to the church thereon, be carefully put in execution; and that all and every person and persons whatsoever shall on every

Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; and that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day, or any part thereof (works of necessity and charity only excepted); and that every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offence forfeit the sum of five shillings; and that no person or persons whatsoever shall publicly cry, shew forth, or expose to sale, any wares, merchandises, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or shewed forth, or exposed to sale.

4 & 5 Anne.

Cap. III.

An act for the Amendment of the Law and the better Advancement of Justice.

19. And be it further enacted that if any person or persons against whom there is or shall be any such cause of suit or action for seamen's wages, or against whom there shall be any cause of action of account, or upon the case, or of debt grounded upon any lending or contract, without specialty, or any of them, be or shall be at the time of any such cause of suit or action, given or accrued, fallen or come beyond the seas, that then such person or persons, who is or shall be entitled to any such suit or action, shall be at liberty to bring the said actions against such person or persons after their return from beyond the seas (so as they take the same after their return from beyond the seas), within such times as are respectively limited for the bringing of the said actions by the said Act made in the one and twentieth year of the reign of King James the First.

Life Assurance Act, 1774.¹⁾

14 Geo. III.

Cap. XLVIII.

An Act for regulating Insurances upon Lives, and for prohibiting all such Insurance, except in cases where the Persons insuring shall have an Interest in the Life or Death of the Persons insured.

Preamble.

Whereas it hath been found by experience, that the making insurances on lives or other events, wherein the assured shall have no interest, hath introduced a mischievous kind of gaming: for remedy whereof, be it enacted that from and after the passing of this Act, no insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering: and that every assurance made, contrary to the true intent and meaning hereof, shall be null and void, to all intents and purposes whatsoever.

No policies on lives without inserting the persons' names, &c.

2. It shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the person or persons' name or names interested therein, or for whose use, benefit, or on whose account such policy is so made or underwrote.

¹⁾ Extended to Ireland, 29 & 30 Vict., c. 42, s. 1.

How much may be recovered where the insured hath interest in lives.

3. In all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events.

Not to extend to insurances on ships, goods, &c.

4. Provided always, that nothing herein contained shall extend, or be construed to extend, to insurances *bonâ fide* made by any person or persons, on ships, goods, or merchandises; but every such insurance shall be as valid and effectual in the law, as if this Act had not been made.

The Country Bankers Act, 1826.

7 Geo. IV.

Cap. XLVI.

An Act for the better regulating copartnerships of certain bankers in England, and for amending so much of an act of the thirty-ninth and fortieth years of the reign of his late majesty king George the third, intituled an act for establishing an agreement with the governor and company of the bank of England, for advancing the sum of three millions towards the supply for the service of the year one thousand eight hundred, as relates to the same (26th May 1826).

1. From and after the passing of this Act it shall and may be lawful for any bodies politic or corporate erected for the purposes of banking, or for any number of persons united in covenants or copartnership, although such persons so united or carrying on business together shall consist of more than six in number, to carry on the trade or business of bankers in England, in like manner as copartnerships of bankers consisting of not more than six persons in number may lawfully do; and for such bodies politic or corporate, or such persons so united as aforesaid, to make and issue their bills or notes at any place or places in England, exceeding the distance of sixty-five miles from London, payable on demand, or otherwise at some place or places specified upon such bills or notes, exceeding the distance of sixty-five miles from London, and not elsewhere, and to borrow, owe, or take up any sum or sums of money on their bills or notes so made and issued at any such place or places as aforesaid: Provided always, that such corporations or persons carrying on such trade or business of bankers in copartnership shall not have any house of business or establishment as bankers in London, or at any place or places not exceeding the distance of sixty-five miles from London; and that every member of any such corporation or copartnership shall be liable to and responsible for the due payment of all bills and notes which shall be issued, and for all sums of money which shall be borrowed, owed, or taken up by the corporation or copartnership of which such person shall be a member, such person being a member at the period of the date of the bills or notes, or becoming or being a member before or at the time of the bills or notes being payable, or being such member at the time of the borrowing, owing, or taking up of any sum or sums of money upon any bills or notes by the corporation or copartnership, or while any sum of money on any bills or notes is owing or unpaid, or at the time the same became due from the corporation or copartnership; any agreement, covenant, or contract to the contrary notwithstanding.

2. Nothing in this Act contained shall extend or be construed to extend to enable or authorize any such corporation, or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers as aforesaid, either by any member of or person belonging to any such corporation or copartnership,

or by any agent or agents, or any other person or persons on behalf of any such corporation or copartnership, to issue or re-issue in London, or at any place or places not exceeding the distance of sixty-five miles from London, any bill or note of such corporation or copartnership, which shall be payable to bearer or demand, or any bank post bill; nor to draw upon any partner or agent, or other person or persons who may be resident in London, or at any place or places not exceeding the distance of sixty-five miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than fifty pounds: Provided also, that it shall be lawful, notwithstanding anything herein or in the said recited Act contained, for any such corporation or copartnership to draw any bill of exchange for any sum of money amounting to the sum of fifty pounds or upwards, payable either in London or elsewhere, at any period after date or after sight.

3. Nothing in this Act contained shall extend or be construed to extend to enable or authorize any such corporation, or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers in England as aforesaid, or any member, agent or agents of any such corporation or copartnership, to borrow, owe, or take up in London, or at any place or places not exceeding the distance of sixty-five miles from London, any sum or sums of money on any bill or promissory note of any such corporation or copartnership payable on demand, or at any less time than six months from the borrowing thereof, nor to make or issue any bill or bills of exchange or promissory note or notes of such corporation or copartnership contrary to the provisions of the said recited Act of the thirty-ninth and fortieth year of king George the Third, save as provided by this Act in that behalf: Provided also, that nothing herein contained shall extend or be construed to extend to prevent any such corporation or copartnership, by any agent or person authorized by them, from discounting in London, or elsewhere, any bill or bills of exchange not drawn by or upon such corporation or copartnership, or by or upon any person on their behalf.

15. And to prevent any doubts that might arise whether the said governor and company, under and by virtue of their charter, and the several acts of parliament which have been made and passed in relation to the affairs of the said governor and company, can lawfully carry on the trade or business of banking, otherwise than under the immediate order, management, and direction of the court of directors of the said governor and company; be it therefore enacted, that it shall and may be lawful for the said governor and company to authorize and empower any committee or committees, agent or agents, to carry on the trade and business of banking, for and on behalf of the said governor and company, at any place or places in that part of the United Kingdom called England, and for that purpose to invest such committee or committees, agent or agents, with such powers of management and superintendence, and such authority to appoint cashiers and other officers and servants as may be necessary or convenient for carrying on such trade and business as aforesaid; and for the same purpose to issue to such committee or committees, agent or agents, cashier or cashiers, or other officer or officers, servant or servants, cash, bills of exchange, bank post bills, bank notes, promissory notes, and other securities for payment of money: Provided always, that all such acts of the said governor and company shall be done and exercised in such manner as may be appointed by any byelaws, constitutions, orders, rules, and directions from time to time hereafter to be made by the general court of the said governor and company in that behalf, such byelaws not being repugnant to the laws of that part of the United Kingdom called England; and in all cases where such byelaws, constitutions, orders, rules, or directions of the said general court shall be wanting, in such manner as the governor, deputy governor, and directors, or the major part of them assembled, whereof the said governor or deputy governor is always to be one, shall or may direct, such directions not being repugnant to the laws of that part of the United Kingdom called England; anything in the said charter or acts of parliament, or other law, usage, matter, or thing to the contrary thereof notwithstanding: Provided always, that in any place where the trade and business of banking shall be carried on for and on behalf of the said governor and company of the Bank of England, any promissory note issued on their account in such place shall be made payable in coin in such as well as in London.

16. If any corporation or copartnership carrying on the trade or business of bankers under the authority of this Act shall be desirous of issuing and re-issuing

notes in the nature of bank notes, payable to the bearer on demand, without the same being stamped as by law is required, it shall be lawful for them so to do on giving security by bond to His Majesty, his heirs and successors, in which bond two of the directors, members, or partners of such corporation or copartnership, shall be the obligors, together with the cashier or cashiers, or accountant or accountants employed by such corporation or copartnership, as the said Commissioners of Stamps shall require; and such bonds shall be taken in such reasonable sums as the duties may amount unto during the period of one year, with condition to deliver to the said Commissioners of Stamps, within fourteen days after the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year, whilst the present stamp duties shall remain in force, a just and true account, verified upon the oaths or affirmations of two directors, members, or partners of such corporation or copartnership, and of the said cashier or cashiers, accountant or accountants, or such of them as the said Commissioners of Stamps shall require, such oaths or affirmations to be taken before any justice of the peace, and which oaths or affirmations any justice of the peace is hereby authorized and empowered to administer, of the amount or value of all their promissory notes in circulation on some given day in every week, for the space of one quarter of a year prior to the quarter day immediately preceding the delivery of such account, together with the average amount or value thereof according to such account; and also to pay or cause to be paid into the hands of the Receivers General of Stamp Duties in Great Britain, as a composition for the duties which would otherwise have been payable for such promissory notes issued within the space of one year, the sum of seven shillings for every one hundred pounds, and also for the fractional part of one hundred pounds of the said average amount or value of such notes in circulation, according to the true intent and meaning of this Act; and on due performance thereof such bond shall be void; and it shall be lawful for the said commissioners to fix the time or times of making such payment, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said commissioners or the major part of them, and as often as the same shall be forfeited, or the party or parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

17. Provided always, that no such corporation or copartnership shall be obliged to take out more than four licences for the issuing of any promissory notes for money payable to the bearer on demand, allowed by law to be re-issued in all for any number of towns or places in England; and in case any such corporation or copartnership shall issue such promissory notes as aforesaid, by themselves or their agents, at more than four different towns or places in England, then, after taking out three distinct licences for three of such towns or places, such corporation or copartnership shall be entitled to have all the rest of such towns or places included in a fourth licence.

The Statute of Frauds Amendment Act, 1828.

9 Geo. IV.

Cap. XIV.

An Act for rendering a written memorandum necessary to the validity of certain promises and engagements. (9th May 1828).

Whereas by an Act passed in England in the twenty-first year of the reign of king James the First, it was, among other things, enacted, that all actions of account and upon the case, other than such accounts as concern the trade or merchandize between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent, should be commenced within three years after the end of the then present session of parliament, or within six years next after the cause of such actions or suit, and not after: And whereas a similar enactment is contained in an Act passed in Ireland in the tenth year of the reign of king Charles the First: And whereas various questions have arisen in actions founded on simple contract, as

to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments; and it is expedient to prevent such questions, and to make provision for giving effect to the said enactments and to the intention thereof: Be it therefore enacted

In Actions of Debt or upon the Case, no Acknowledgment shall be deemed sufficient unless it be in Writing, or by Part Payment.

1. That in actions of debt or upon the case grounded upon any simple contract no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby; and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator shall lose the benefit of the said enactments or either of them, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by either of the said recited Acts or this Act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

2. (*Repealed, S. L. R. Act, 1890.*)

Indorsements of Payment.

3. And be it further enacted, that no indorsement or memorandum of any payment written or made after the time appointed for this Act to take effect, upon any promissory note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of either of the said statutes.

Simple Contract Debts alleged by way of Set-off.

4. And be it further enacted, that the said recited Acts and this Act shall be deemed and taken to apply to the case of any debt on simple contract alleged by way of set-off on the part of any defendant, either by plea, notice, or otherwise.

5. (*Repealed, S. L. R. Act, 1875.*)

Representations of Character.

6. And be it further enacted, that no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

7. (*Repealed, 56 & 57 Vict. c. 71, s. 60.*)

Memorandums exempted from Stamps.

8. And be it further enacted, that no memorandum or other writing made necessary by this Act shall be deemed to be an agreement within the meaning of any statute relating to the duties of stamps.

Not to extend to Scotland.

9. And be it further enacted, that nothing in this Act contained shall extend to Scotland.

Commencement of Act.

10. And be it further enacted, that this Act shall commence and take effect on the first day of January one thousand eight hundred and twenty-nine.

The Bills of Exchange (Ireland) Act, 1828.

9 Geo. IV.

Cap. XXIV.

An Act to consolidate and amend the Laws relating to Bills of Exchange and Promissory Notes in Ireland. (19th June 1828).

1. (*Repealed, S. L. R. Act, 1873.*)
2. (*Repealed, 45 & 46 Vict. c. 61, s. 96.*)
3. (*Repealed, S. L. R. Act, 1891.*)
4. (*Repealed, 45 & 46 Vict. c. 61, s. 96.*)
5. (*Repealed, S. L. R. Act, 1891.*)

Bills accepted in satisfaction of any former Debt, to be deemed a full Payment.

6. And be it further enacted, that if any person doth or shall receive any such bill or note, for and in satisfaction of any former debt, or of any sum of money formerly due unto such person, the same shall be accounted and esteemed, at law and in equity, a full and complete payment of such debt, if such person so receiving any such bill or note for his debt shall not use due diligence to obtain payment thereof by endeavouring to get such bill accepted and paid, or such note paid, and also make his protest as aforesaid, either for non-acceptance or nonpayment thereof, or otherwise give due notice of the dishonour thereof as aforesaid; provided that nothing herein contained shall extend to satisfy or discharge any other and different security or remedy that any person using such due diligence as aforesaid may have for the same debt against the drawer, acceptor, or indorser of such bill, or the maker or indorser of such note.

7—11. (*Repealed, 45 & 46 Vict. c. 61, s. 96.*)12. (*Repealed, S. L. R. Act, 1873.*)**Notaries Public, upon receiving Bills, to enter and register the same in a Book, to be open to Inspection.**

13. And whereas it would be productive of great benefit to the holders of foreign and inland bills of exchange and promissory notes, to cause the same to be presented by a notary public, and (if necessary) noted for non-acceptance or nonpayment, either with a view to a future protest or otherwise, or whether such bills or notes may have been previously presented for acceptance or payment by such holders thereof, or otherwise; and also that such notary shall fairly and truly register and copy such bill of exchange or promissory note as he may so present; and it is therefore expedient to regulate the charges which such notary public may lawfully make, in relation to such noting, presentment, registering, and copying; be it therefore enacted, that from and after the first day of September one thousand eight hundred and twenty-eight, whenever any bill of exchange or promissory note shall be sent or delivered to any notary public in Ireland, for any of the purposes aforesaid, the same shall be by him forthwith registered and copied in a book to be kept by him for that purpose; and for which registering and copying he shall be entitled and is hereby authorized to make a charge of one shilling, whether such bill shall be afterwards noted or protested or not; and such notary shall be further entitled to make an additional charge of one shilling and sixpence for presenting or causing to be presented any such bill or note for payment or acceptance (as the case may be); and such notary shall be further entitled to make an additional charge of one shilling and sixpence for noting every such bill or note, when the same shall be dishonoured for non-acceptance or nonpayment, as the case may be; provided the place where such presentment shall be made shall be within the limits or within the bounds of any city or town in Ireland; provided always, that every such charge as such notary public shall be so entitled to make as aforesaid shall in all cases be paid and payable to such notary by the holder or holders of such bills or notes; and every such holder shall be entitled and is hereby authorized to recover over, from the acceptor of any such bill of exchange, or maker of any such promissory note, or other party or parties liable to such holder upon such bill or note, the full amount of such notary's charge as aforesaid, for registering and copying the same in his books as aforesaid, in case such bill or note shall, previously to its being sent or delivered to such notary for the purpose aforesaid, have been duly presented

for acceptance or payment, and if same be payable, shall not have been paid, or the amount thereof duly and legally tendered, or in case the same, though it may not have been so previously presented and dishonoured, shall not, upon being duly presented by such notary, be duly honoured by acceptance or payment thereof, as the case may be; and every such holder shall be further entitled and is hereby authorized to recover over, from such acceptor or maker of such bill or note, or other party or parties thereto, being liable thereon to such holder as aforesaid, the full amount of such notary's said charge for presenting or noting the same, in case the same shall not, upon being so duly presented by such notary as aforesaid, be duly honoured by acceptance or payment thereof, as the case may be: Provided also, that such holder shall be entitled and is hereby authorized to recover over, in like manner, from such acceptor or maker of such bill or note, or other party or parties thereto, as last aforesaid, the full amount of such notary's charge for presenting the same, in case (notwithstanding such acceptance or payment thereof, upon such presentment by such notary as aforesaid) the same had been previously thereto duly presented to such acceptor or maker for acceptance or payment thereof, and such acceptance or payment had not been made: Provided also, that in all cases where the holder of such bill or note shall be entitled, under the aforesaid provisions of this Act, to recover from the acceptor or maker of such bill or note, or other party or parties thereto, such notary's charge for registering and copying in his books, or presenting the same for payment, or noting the same as aforesaid, it shall be lawful for such notary, at the time of presenting such bill or note for the payment thereof, to demand from the acceptor or maker thereof, or the person paying the same, the full amount of such charge or charges, over and above the sum specified in such bill or note; and in case such acceptor or maker shall, on such demand, refuse to pay such notary the full amount of such charge or charges, it shall and may be lawful for such notary to refuse to receive payment of the sum specified in such bill or note, or the acceptance of such bill, notwithstanding that the same may be tendered; but every such bill or note shall, by reason of such refusal to pay such charge or charges as aforesaid, be deemed to be and shall be dishonoured, to all intents and purposes whatsoever.

Sums allowed for protesting Bills.

14. And be it further enacted, that every such notary public, or other person as aforesaid, shall be entitled to a sum of four shillings for protesting any foreign bill of exchange, over and above all stamp duty payable upon such protest, and also over and besides the sum of one shilling for registering and copying such bill, as herein-before provided.

Notaries practising in Dublin to keep a Public Office.

15. And be it enacted, that all public notaries practising in the city of Dublin shall keep a public office in some known and convenient street or place in the said city, on which the name of such notary and his profession shall be set forth in legible characters; and that the said afternoon until nine of the clock in the evening of every day, (Sunday, Good Friday, Christmas Day, and days of fast and days of thanks-giving as aforesaid excepted)¹).

Carriers Act, 1830.

11 Geo. IV. & 1 Will. IV.

Cap. LXVIII.

An Act for the more effectual Protection of Mail Contractors, Stage Coach Proprietors and other Common Carriers for Hire, against the Loss of or Injury to Parcels or Packages delivered to them for Conveyance or Custody, the Value and Contents of which shall not be declared to them by the Owners thereof (23rd July 1830).

Preamble.

Whereas by reason of the frequent practice of bankers and others of sending by the public mails, stage coaches, waggons, vans, and other public conveyances

¹) See 27 & 28 Vict. c. 7, s. 2, *infra*.

by land for hire, parcels and packages containing money, bills, notes, jewellery and other articles of great value in small compass, much valuable property is rendered liable to depredation, and the responsibility of mail contractors, stage coach proprietors and common carriers for hire is greatly increased: And whereas through the frequent omission by persons sending such parcels and packages to notify the value and nature of the contents thereof, so as to enable such mail contractors, stage coach proprietors and other common carriers, by due diligence, to protect themselves against losses arising from their legal responsibility, and the difficulty of fixing parties with knowledge of notices published by such mail contractors, stage coach proprietors, and other common carriers, with the intent to limit such responsibility, they have become exposed to great and unavoidable risks, and have thereby sustained heavy losses:

Mail contractors, coach proprietors and carriers not to be liable for loss of certain goods above the value of £10, unless delivered as such and increased charge accepted.

1. Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this Act no mail contractor, stage coach proprietor, or other common carrier by land for hire shall be liable for the loss of or injury to any article or articles or property of the descriptions following: (that is to say,) gold or silver coin of this realm or of any foreign State, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks or time-pieces of any description, trinkets, bills, notes of the governor and company of the Banks of England, Scotland and Ireland respectively, or of any other bank in Great Britain or Ireland, orders, notes or securities for payment of money, English or foreign, stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate, or plated articles, glass, china, silks in a manufactured and unmanufactured state, and whether wrought up or not wrought up with other materials, furs or lace¹), or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire or to accompany the person of any passenger in any mail or stage coach or other public conveyance when the value of such article or articles or property aforesaid contained in such parcel or package shall exceed the sum of ten pounds, unless at the time of the delivery thereof at the office, warehouse or receiving house of such mail contractor, stage coach proprietor or other common carrier, or to his, her or their book-keeper, coachman or other servant, for the purpose of being carried or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

When parcel so delivered increased rate of charge may be demanded. Notice of the same to be affixed in offices or warehouses.

2. And be it further enacted, that when any parcel or package containing any of the articles above specified shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of ten pounds, it shall be lawful for such mail contractors, stage coach proprietors, and other common carriers to demand and receive an increased rate of charge, to be notified by some notice affixed in legible characters in some public and conspicuous part of the office, warehouse, or other receiving house where such parcels or packages are received by them for the purpose of conveyance, stating the increased rates of charge required to be paid over and above the ordinary rate of carriage as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such valuable articles as aforesaid at such office shall be bound by such notice without further proof of the same having come to their knowledge.

Carriers to give receipts, acknowledging increased rate. In case of neglect to give receipt, &c.

3. Provided always, and be it further enacted, that when the value shall have been so declared, and the increased rate of charge paid, or an engagement

¹ See 28 & 29 Viet. c. 94, *infra*.

to pay the same shall have been accepted as hereinbefore mentioned, the person receiving such increased rate of charge or accepting such agreement shall, if thereto required, sign a receipt for the package or parcel, acknowledging the same to have been insured, which receipt shall not be liable to any stamp duty; and if such receipt shall not be given when required, or such notice as aforesaid shall not have been affixed, the mail contractor, stage coach proprietor, or other common carrier as aforesaid shall not have or be entitled to any benefit or advantage under this Act, but shall be liable and responsible as at the common law, and be liable to refund the increased rate of charge.

Publication of notices not to limit the liability of proprietors, &c, in respect of any other goods conveyed.

4. Provided always, and be it enacted, that from and after the first day of September now next ensuing no public notice or declaration heretofore made or hereafter to be made, shall be deemed or construed to limit or in anywise affect the liability at common law of any such mail contractors, stage coach proprietors, or other public common carriers as aforesaid, for or in respect of any articles or goods to be carried and conveyed by them; but that all and every such mail contractors, stage coach proprietors, and other common carriers as aforesaid shall from and after the said first day of September be liable, as at the common law, to answer for the loss of any injury to any articles and goods in respect whereof they may not be entitled to the benefit of this Act; any public notice or declaration by them made and given contrary thereto, or in anywise limiting such liability, notwithstanding.

Every office used to be deemed a receiving house; and any one coach proprietor or carrier shall be liable to be sued.

5. And be it further enacted, that for the purposes of this Act every office, warehouse, or receiving house which shall be used or appointed by any mail contractor, or stage coach proprietor, or other such common carrier as aforesaid for the receiving of parcels to be conveyed as aforesaid, shall be deemed and taken to be the receiving house, warehouse, or office of such mail contractor, stage coach proprietor, or other common carrier: and that any one or more of such mail contractors, stage coach proprietors, or common carriers shall be liable to be sued by his, her, or their name or names only; and that no action or suit commenced to recover damages for loss or injury to any parcel, package, or person shall abate for the want of joining any coproprietor or co-partner in such mail, stage coach, or other public conveyance by land for hire as aforesaid.

Not to affect contracts.

6. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to annul or in anywise affect any special contract between such mail contractor, stage coach proprietor, or common carrier, and any other parties, for the conveyance of goods and merchandises.

Parties entitled to damages for loss may also recover back extra charges.

7. Provided also, and be it further enacted, that where any parcel or package shall have been delivered at any such office, and the value and contents declared as aforesaid, and the increased rate of charges been paid, and such parcels or packages shall have been lost or damaged, the party entitled to recover damages in respect of such loss or damage shall also be entitled to recover back such increased charges so paid as aforesaid, in addition to the value of such parcel or package.

Nothing herein to protect felonious acts.

8. Provided also, and be it further enacted, that nothing in this Act shall be deemed to protect any mail contractor, stage coach proprietor, or other common carrier for hire, from liability to answer for loss or injury to any goods or articles whatsoever, arising from the felonious acts of any coachman, guard, book-keeper, porter, or other servant in his or their employ, nor to protect any such coachman, guard, book-keeper, or other servant from liability for any loss or injury occasioned by his or their own personal neglect or misconduct.

Coach proprietors and carrier liable only to such damages as are proved.

9. Provided also, and be it further enacted, that such mail contractors, stage coach proprietors, or other common carriers for hire shall not be concluded as to

the value of any such parcel or package by the value so declared as aforesaid, but that he or they shall in all cases be entitled to require, from the party suing in respect of any loss or injury, proof of the actual value of the contents by the ordinary legal evidence, and that the mail contractors, stage coach proprietors, or other common carriers as aforesaid shall be liable to such damages only as shall be so proved as aforesaid, not exceeding the declared value, together with the increased charges as before mentioned.

Money may be paid into court in all actions for loss of goods.

10. And be it further enacted, that in all actions to be brought against any such mail contractor, stage coach proprietor, or other common carrier as aforesaid for the loss of or injury to any goods delivered to be carried, whether the value of such goods shall have been declared or not, it shall be lawful for the defendant or defendants to pay money into court in the same manner and with the same effect as the money may be paid into court in any other action.

The Civil Procedure Act, 1833.

3 & 4 Will. IV.

Cap. XLII.

An Act for the further Amendment of the Law, and the better Advancement of Justice (14th August 1833).

Limitation of Action of Debt on Specialties, &c.

3. And be it further enacted, that all actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions of debt or scire facias upon any recognizance and also all actions of debt upon any award where the submission is not by specialty, or for any fine due in respect of any copyhold estates, or for an escape, or for money levied on any fieri facias and all actions for penalties, damages, or sums of money given to the party grieved, by any statute now or hereafter to be in force that shall be sued or brought at any time after the end of the present session of parliament, shall be commenced and sued within the time and limitation hereinafter expressed, and not after; that is to say, the said actions of debt for rent upon an indenture of demise, or covenant or debt upon any bond or other specialty, actions of debt or scire facias upon recognizance, within ten years after the end of this present session, or within twenty years after the cause of such actions or suits, but not after; the said actions by the party grieved, one year after the end of this present session, or within two years after the cause of such actions or suits, but not after; and the said other actions within three years after the end of this present session, or within six years after the cause of such actions or suits, but not after; provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

Remedy for Infants, Femes Covert, &c.

4. And be it further enacted, that if any person or persons that is or are or shall be entitled to any such action or suit, or to such scire facias, is or are or shall be, at the time of any such cause of action accrued, within the age of twenty-one years, feme covert, non compos mentis, or beyond the seas, then such person or persons shall be at liberty to bring the same actions, so as they commence the same within such times after their coming to or being of full age, discover, of sound memory, or returned from beyond the seas, as other persons having no such impediment should, according to the provisions of this Act, have done; and that if any person or persons against whom there shall be any such cause of action is or are, or shall be at the time such cause of action accrued, beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited after the return of such person or persons from beyond the seas.

Proviso in case of Acknowledgment in Writing, or by Part Payment.

5. Provided always, that if any acknowledgment shall have been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon, it shall and may be lawful for the person or persons entitled to such actions to bring his or their action for the money remaining unpaid and so acknowledged to be due within twenty years after such acknowledgment by writing or part payment or part satisfaction as aforesaid, or in case the person or persons entitled to such action shall at the time of such acknowledgment be under such disability as aforesaid, or the party making such acknowledgment be, at the time of making the same, beyond the seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond seas, as the case may be; and the plaintiff or plaintiffs in any such action, or any indenture, specialty, or recognizance, may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea of this statute.

No Part of the United Kingdom, &c. to be deemed beyond the Seas within the Meaning of this Act.

7. And be it further enacted, that no part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any Islands adjacent to any of them, being Part of the Dominions of His Majesty, shall be deemed to be beyond the seas within the meaning of this Act, or of the Act passed in the twenty-first year of the reign of king James the First, intituled an Act for limitation of actions, and for avoiding of suits in law.

Jury empowered to allow Interest upon Debts.

28. And be it further enacted, that upon all debts or sums certain, payable at a certain time or otherwise, the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law.

In certain Actions the Jury may give Damages in the Nature of Interest.

29. And be it further enacted, that the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass de bonis asportatis, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.

The Bank of England Act, 1833.

3 & 4 Will. IV.

Cap. XCVIII.

An Act for giving to the Corporation of the Governor and Company of the Bank of England certain Privileges, for a limited Period, under certain Conditions (29th August 1833).

1. The governor and company of the bank of England shall have and enjoy such exclusive privilege of banking as is given by this Act, as a body corporate, for the period and upon the terms and conditions herein-after mentioned, and subject to termination of such exclusive privilege at the time and in the manner in this Act specified.

2. During the continuance of the said privilege, no body politic or corporate, and no society or company, or persons united or to be united in covenants or partnerships, exceeding six persons, shall make or issue in London, or within sixty-five

miles thereof, any bill of exchange or promissory note, or engagement for the payment of money on demand, or upon which any person holding the same may obtain payment on demand: Provided always, that nothing herein or in the said recited act of the seventh year of the reign of his late majesty king George the Fourth contained shall be construed to prevent any body politic or corporate, or any society or company, or incorporated company or corporation, or co-partnership, carrying on and transacting banking business at any greater distance than sixty-five miles from London, and not having any house of business or establishment as bankers in London, or within sixty-five miles thereof, (except as herein-after mentioned,) to make and issue their bills and notes, payable on demand or otherwise, at the place at which the same shall be issued, being more than sixty-five miles from London, and also in London, and to have an agent or agents in London, or at any other place at which such bills or notes shall be made payable for the purpose of payment only, but no such bill or note shall be for any sum less than five pounds, or be re-issued in London, or within sixty-five miles thereof.

3. Any body politic or corporate, or society, or company, or partnership, although consisting of more than six persons, may carry on the trade or business of banking in London, or within sixty-five miles thereof, provided that such body politic or corporate, or society, or company, or partnership do not borrow, owe, or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this Act to the said governor and company of the bank of England.

4. Provided always, that from and after the first day of August one thousand eight hundred and thirty-four all promissory notes payable on demand of the governor and company of the bank of England which shall be issued at any place in that part of the United Kingdom called England out of London, where the trade and business of banking shall be carried on for and on behalf of the said governor and company of the bank of England, shall be made payable at the place where such promissory notes shall be issued; and it shall not be lawful for the said governor and company, or any committee, agent, cashier, officer, or servant of the said governor and company, to issue, at any such place out of London, any promissory note payable on demand which shall not be made payable at the place where the same shall be issued, any thing in the said recited Act of the seventh year aforesaid to the contrary notwithstanding.

5. (*Repealed, S. L. R. Act, 1874.*)

6. From and after the first day of August one thousand eight hundred and thirty-four, unless and until parliament shall otherwise direct, a tender of a note or notes of the governor and company of the bank of England, expressed to be payable to bearer on demand, shall be a legal tender, to the amount expressed in such note or notes, and shall be taken to be valid as a tender to such amount for all sums above five pounds on all occasions on which any tender of money may be legally made, so long as the bank of England shall continue to pay on demand their said notes in legal coin: Provided always, that no such note or notes shall be deemed a legal tender of payment by the governor and company of the bank of England, or any branch bank of the said governor and company; but the said governor and company are not to become liable or be required to pay and satisfy, at any branch bank of the said governor and company, any note or notes of the said governor and company not made specially payable at such branch bank; but the said governor and company shall be liable to pay and satisfy at the Bank of England in London, all notes of the said governor and company, or of any branch thereof.

7. (*Repealed, S. L. R. Act, 1861.*)

8. An account of the amount of bullion and securities in the bank of England belonging to the said governor and company, and of notes in circulation, and of deposits in the said bank, shall be transmitted weekly to the Chancellor of the Exchequer for the time being, and such accounts shall be consolidated at the end of every month, and an average state of the bank accounts of the preceding three months, made from such consolidated accounts as aforesaid, shall be published every month in the next succeeding London Gazette.

9—13. (*Repealed, S. L. R. Act, 1874.*)

15. (*Repealed, S. L. R. Act, 1874.*)

The Debtors (Ireland) Act, 1840.

3 & 4 Vict.

Cap. CV.

Limitation of Action of Debt on Specialties, &c.

32. And be it enacted, that all actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions of debt or scire facias upon any recognizance, and also all actions of debt upon any award where the submission is not by specialty, or for any fine due in respect of any copyhold estates, or for an escape, or for money levied on any fieri facias, and all actions for penalties, damages, or sums of money given to the party grieved by any statute now or hereafter to be in force, that shall be sued or brought at any time after the time when this act shall commence and take effect, shall be commenced and sued within the time and limitation herein-after expressed, and not after; (that is to say,) the said actions of debt for rent upon an indenture of demise, or covenant or debt upon any bond or other specialty, actions of debt or scire facias upon recognizance, within ten years after the end of this present session, or within twenty years after the cause of such actions or suits, but not after; the said actions by the party grieved one year after the end of this present session, or within two years after the cause of such actions or suits, but not after; and the said other actions within three years after the end of this present session, or within six years after the cause of such actions or suits, but not after; provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

Infants, Femes Covert, &c.

33. And be it enacted, that if any person or persons that is or are or shall be entitled to any such action or suit, or to such scire facias, is or are, or shall be at the time of any such cause of action accrued, within the age of twenty-one years, feme covert, *non compos mentis*, or beyond the Seas, then such person or persons shall be at liberty to bring the same actions, so as they commence the same within such times after their coming to or being of full age, discovert, of sound memory, or returned from beyond the seas, as other persons having no such impediment should, according to the provisions of this Act, have done; and that if any person or persons against whom there shall be any such cause of action is or are or shall be at the time such cause of action accrued beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited, after the return of such person or persons from beyond the seas.

Acknowledgment in Writing, or Part Payment.

34. Provided always, and be it enacted, that if any acknowledgment shall have been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon, it shall and may be lawful for the person or persons entitled to such actions to bring his or their action for the money remaining unpaid and so acknowledged to be due within twenty years after such acknowledgment by writing or part payment or part satisfaction as aforesaid; or in case the person or persons entitled to such action shall at the time of such acknowledgment be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same beyond the seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond the seas (as the case may be); and the plaintiff or plaintiffs in any such action on any indenture, specialty, or recognizance may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid in answer to a plea of this statute.

The Bank Charter Act, 1844.

7 & 8 Viet.

Cap. XXXII.

An Act to regulate the issue of bank notes, and for giving to the Governor and Company of the Bank of England certain privileges for a limited period (19th July 1844).

Whereas it is expedient to regulate the issue of bills or notes payable on demand: And whereas an Act was passed in the fourth year of the reign of His late Majesty King William the Fourth, intituled an Act for giving to the corporation of the governor and company of the Bank of England certain privileges for a limited period, under certain conditions; and it is expedient that the privileges of exclusive banking therein mentioned should be continued to the said governor and company of the Bank of England, with such alterations as are herein contained, upon certain conditions: Be it enacted:

Bank to establish a separate Department for the Issue of Notes.

1. That from and after the thirty-first day of August one thousand eight hundred and forty-four the issue of promissory notes of the governor and company of the Bank of England, payable on demand, shall be separated and thenceforth kept wholly distinct from the general banking business of the said governor and company; and the business of and relating to such issue shall be thenceforth conducted and carried on by the said governor and company in a separate department to be called "The issue department of the Bank of England," subject to the rules and regulations herein-after contained; and it shall be lawful for the court of directors of the said governor and company, if they shall think fit, to appoint a committee or committees of directors for the conduct and management of such issue department of the Bank of England, and from time to time to remove the members, and define, alter, and regulate the constitution and powers of such committee, as they shall think fit, subject to any byelaws, rules, or regulations which may be made for that purpose: Provided nevertheless, that the said issue department shall always be kept separate and distinct from the banking department of the said governor and company.

Management of the Issue by Bank of England.

2. And be it enacted, that upon the thirty-first day of August one thousand eight hundred and forty-four there shall be transferred, appropriated, and set apart by the said governor and company to the issue department of the Bank of England securities to the value of fourteen million pounds, whereof the debt due by the public to the said governor and company shall be and be deemed a part; and there shall also at the same time be transferred, appropriated, and set apart by the said governor and company to the said issue department so much of the gold coin and gold and silver bullion then held by the Bank of England as shall not be required by the banking department thereof; and thereupon there shall be delivered out of the said issue department into the said banking department of the Bank of England such an amount of Bank of England notes as, together with the Bank of England notes then in circulation, shall be equal to the aggregate amount of the securities, coin, and bullion so transferred to the said issue department of the Bank of England; and the whole amount of Bank of England notes then in circulation, including those delivered to the banking department of the Bank of England as aforesaid, shall be deemed to be issued on the credit of such securities, coin, and bullion so appropriated and set apart to the said issue department; and from thenceforth it shall not be lawful for the said governor and company to increase the amount of securities for the time being in the said issue department, save as herein-after is mentioned, but it shall be lawful for the said governor and company to diminish the amount of such securities, and again to increase the same to any sum not exceeding in the whole the sum of fourteen million pounds, and so from time to time as they shall see occasion; and from and after such transfer and appropriation to the said issue department as aforesaid it shall not be lawful for the said governor

and company to issue Bank of England notes, either into the banking department of the Bank of England, or to any person or persons whatsoever, save in exchange for other Bank of England notes, or for gold coin or for gold or silver bullion received or purchased for the said issue department under the provisions of this Act, or in exchange for securities acquired and taken in the said issue department under the provisions herein contained: Provided always, that it shall be lawful for the said governor and company in their banking department to issue all such Bank of England notes as they shall at any time receive from the said issue department or otherwise, in the same manner in all respects as such issue would be lawful to any other person or persons.

Proportion of Silver Bullion to be retained in the Issue Department.

3. And whereas it is necessary to limit the amount of silver bullion on which it shall be lawful for the issue department of the Bank of England to issue Bank of England notes: Be it therefore enacted, that it shall not be lawful for the Bank of England to retain in the issue department of the said bank at any one time an amount of silver bullion exceeding one fourth part of the gold coin and bullion at such time held by the Bank of England in the issue department.

All Persons may demand of the Issue Department Notes for Gold Bullion.

4. And be it enacted, that all persons shall be entitled to demand from the issue department of the Bank of England Bank of England notes in exchange for gold bullion, at the rate of three pounds seventeen shillings and ninepence per ounce of standard gold: Provided always, that the said governor and company shall in all cases be entitled to require such gold bullion to be melted and assayed by persons approved by the said governor and company, at the expense of the parties tendering such gold bullion.

Power to increase Securities in the Issue Department, and issue additional Notes.

5. Provided always, and be it enacted, that if any banker who on the sixth day of May one thousand eight hundred and forty-four was issuing his own bank notes shall cease to issue his own bank notes, it shall be lawful for Her Majesty in Council, at any time after the cessation of such issue, upon the application of the said governor and company, to authorize and empower the said governor and company to increase the amount of securities in the said issue department beyond the total sum or value of fourteen million pounds, and thereupon to issue additional Bank of England notes to an amount not exceeding such increased amount of securities specified in such order in council, and so from time to time: Provided always, that such increased amount of securities specified in such order in council shall in no case exceed the proportion of two thirds the amount of bank notes which the banker so ceasing to issue may have been authorized to issue under the provisions of this Act; and every such order in council shall be published in the next succeeding London Gazette.

6. Account to be rendered by the Bank of England.

7. Bank of England exempted from Stamp Duty upon their Notes.

8. (*Repealed, S. L. R. (Nr. 2) Act, 1874.*)

Bank to allow the Public the Profits of Increased Circulation.

9. And be it enacted, that in case, under the provisions herein-before contained, the securities held in the said issue department of the Bank of England shall at any time be increased beyond the total amount of fourteen million pounds, then and in each and every year in which the same shall happen, and so long as such increase shall continue, the said governor and company shall, in addition to the said annual sum of one hundred and eighty thousand pounds, make a further payment or allowance to the public, equal in amount to the net profit derived in the said issue department during the current year from such additional securities, after deducting the amount of the expense occasioned by the additional issue during the same period, which expenses shall include the amount of any and every composition or payment to be made by the said governor and company to any banker in consideration of the discontinuance at any time hereafter of the issue of bank notes by such banker.

No new Bank of Issue.

10. And be it enacted, that from and after the passing of this Act no person other than a banker who on the sixth day of May one thousand eight hundred and

forty-four was lawfully issuing his own bank notes shall make or issue bank notes in any part of the United Kingdom.

Restriction against Issue of Bank Notes.

11. And be it enacted, that from and after the passing of this Act it shall not be lawful for any banker to draw, accept, make, or issue in England or Wales, any bill of exchange or promissory note or engagement for the payment of money payable to bearer on demand, or to borrow, owe, or take up, in England or Wales, any sums or sum of money on the bills or notes of such banker payable to bearer on demand, save and except that it shall be lawful for any banker who was on the sixth day of May one thousand eight hundred and forty-four carrying on the business of a banker in England or Wales, and was then lawfully issuing, in England or Wales, his own bank notes, under the authority of a licence to that effect, to continue to issue such notes to the extent and under the conditions herein-after mentioned, but not further or otherwise; and the right of any company or partnership to continue to issue such notes shall not be in any manner prejudiced or affected by any change which may hereafter take place in the personal composition of such company or partnership, either by the transfer of any shares or share therein, or by the admission of any new partner or member thereto, or by the retirement of any present partner or member therefrom: Provided always, that it shall not be lawful for any company or partnership now consisting of only six or less than six persons to issue bank notes at any time after the number of partners therein shall exceed six in the whole.

Bankers ceasing to Issue Notes may not resume.

12. And be it enacted, that if any banker in any part of the United Kingdom who after the passing of this Act shall be entitled to issue bank notes shall become bankrupt, or shall cease to carry on the business of a banker, or shall discontinue the issue of bank notes, either by agreement with the governor and company of the Bank of England or otherwise, it shall not be lawful for such banker at any time thereafter to issue any such notes.

13. Existing Banks of Issue to continue, under certain Limitations.

14. Provision for united Banks.

15. Duplicate Certificate to be published in the Gazette.

16. In case Banks become united, Commissioners to certify the Amount of Bank Notes which each Bank was authorized to issue.

17. Penalty on Banks issuing in excess.

18. Issuing Banks to render Accounts.

19. Mode of ascertaining the average Amount of Bank Notes of each Banker in circulation during the first Four Weeks after 10th October 1844.

20. Inspection of books.

21. All Bankers to return Names once a Year to the Stamp Office.

22. Bankers to take out a separate Licence for every Place at which they issue Notes or Bills. Proviso in favour of Bankers who had Four such Licences in force on the 6th of May 1844.

23. Compensation to certain Bankers named in the Schedule.

24. Bank of England to be allowed to compound with Issuing Banks.

25. (*Repealed, 19 & 20 Vict. c. 20.*)

Banks within Sixty-five Miles of London may accept, &c. Bills.

26. And be it enacted, that from and after the passing of this Act it shall be lawful for any society or company or any persons in partnership, though exceeding six in number, carrying on the business of banking in London, or within sixty-five miles thereof, to draw, accept, or endorse bills of exchange, not being payable to bearer on demand, anything in the herein-before recited Act passed in the fourth year of the reign of His said Majesty King William the Fourth, or in any other Act, to the contrary notwithstanding.

Bank to enjoy Privileges, subject to Redemption.

27. And be it enacted, that the said governor and company of the Bank of England shall have and enjoy such exclusive privilege of banking as is given by this Act, upon such terms and conditions, and subject to the termination thereof at such time and in such manner, as is by this Act provided and specified; and all

and every the powers and authorities, franchises, privileges, and advantages, given or recognized by the said recited Act passed in the fourth year of the reign of His Majesty king William the Fourth as belonging to or enjoyed by the said governor and company of the Bank of England, or by any subsequent Act or Acts of parliament, shall be and the same are hereby declared to be in full force and continued by this Act, except so far as the same are altered by this Act; subject nevertheless to redemption upon the terms and conditions following; (that is to say), at any time upon twelve months notice to be given after the first day of August one thousand eight hundred and fifty-five, and upon repayment by parliament to the said governor and company or their successors of the sum of eleven million fifteen thousand and one hundred pounds, being the debt now due from the public to the said governor and company, without any deduction, discount, or abatement whatsoever, and upon payment to the said governor and company and their successors of all arrears of the sum of one hundred thousand pounds per annum, in the last-mentioned Act mentioned, together with the interest or annuities payable upon the said debt or in respect thereof, and also upon repayment of all the principal and interest which shall be owing unto the said governor and company and their successors upon all such tallies, exchequer orders, exchequer bills, or parliamentary funds which the said governor and company or their successors shall have remaining in their hands or be entitled to at the time of such notice to be given as last aforesaid, then and in such case, and not till then, the said exclusive privileges of banking granted by this Act shall cease and determine at the expiration of such notice of twelve months; and any vote or resolution of the house of commons, signified under the hand of the speaker of the said house in writing, and delivered at the public office of the said governor and company, shall be deemed and adjudged to be a sufficient notice.

Interpretation Clause.

28. And be it enacted, that in this Act in the term "Bank of England notes" shall extend and apply to the promissory notes of the governor and company of the Bank of England payable to bearer on demand; and that the term "banker" shall extend and apply to all corporations, societies, partnerships, and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes or otherwise, except only the governor and company of the Bank of England; and that the word "person" used in this Act shall include corporations, and that the singular number in this Act shall include the plural number, and the plural number the singular, except where there is anything in the context repugnant to such construction; and that the masculine gender in this Act shall include the feminine, except where there is anything in the context repugnant to such construction.

29. (*Repealed, S. L. R. (Nr. 2) Act, 1874.*)

Schedules.

The Common Law Procedure (Ireland) Act, 1853.

16 & 17 Vict.

Cap. CXIII.

Limitation of certain Actions.

20. All actions for rent upon an indenture of demise, all actions upon any bond or other specialty, or upon any judgment, statute staple, statute merchant, or recognizance, shall be commenced and sued within twenty years after the cause of such actions or suits, or the recovery of such judgment, but not after; all actions grounded upon any lending or contract, express or implied, without specialty, or upon any award, where the submission is not by specialty, or for any money levied on fieri facias; all actions of account or for not accounting, other than for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants; all actions for direct injuries to real or personal property;

actions for the taking away, detention, or conversion of property, goods, and chattels; actions for libel, malicious prosecution and arrest, seduction, criminal conversation; and actions for all other causes which would heretofore have been brought in the form of action called trespass on the case, except as herein-after excepted, shall be commenced and sued within six years after the cause of such actions, but not after; and all actions for assault, menace, battery, wounding, and imprisonment shall be commenced and sued within four years after the cause of such actions, but not after; and all actions for words, and for penalties, damages, or sums of money given to the party grieved, by any statute now or hereafter to be in force, shall be commenced and sued within two years after the words spoken or the cause of such action or suit, but not after; and with respect to every cause of action not herein specifically provided for, being the subject matter of a personal action, such actions in respect thereof shall be brought within the same period of limitation now applicable thereto, notwithstanding that such cause of action may be described or expressed in such statutes by reference to any particular form of action: Provided that nothing in this Act contained shall alter the period of limitation of any action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

Remedy for Disabilities.

22. If any person that is or shall be entitled to any such action is or shall be at the time of any such cause of action accrued within the age of twenty-one years, a married woman, of unsound mind, or beyond the seas, then such person shall be at liberty to bring the same action, so as he commence the same within such time after the cessation of such disability or his return from beyond the seas, as other persons having no such impediment should, according to the provisions of this Act, have done; and if any person or persons against whom there shall be any such cause of action is or shall be at the time such cause of action accrued beyond the seas, then the person entitled to any such cause of action shall be at liberty to bring the same against such person, within such time as is before limited, after the return of such person from beyond the seas.

After Acknowledgment or part Payment on account of Specialty, Judgment, Recognizance, &c.

23. If any acknowledgment shall have been or shall be made, either by writing signed by the party liable by virtue of any indenture, specialty, judgment, statute staple, or statute merchant, or recognizance, or his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon, it shall be lawful for the person entitled to bring his action for the money remaining unpaid, and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part payment or part satisfaction as aforesaid, or in case the person entitled shall at the time of such acknowledgment be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same beyond the seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond the seas, as the case may be; and the plaintiff in any such action on any indenture, specialty, judgment, statute staple, or statute merchant, or recognizance, may rely on such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea of this statute.

After Acknowledgment or part Payment in respect of Liabilities on Simple Contract.

24. In actions grounded upon any simple contract no acknowledgment or promise shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this Act in relation to the limitation of actions, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby; and where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator shall lose the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whomsoever.

Indorsement of Payment by Creditor not to take Case out of Statute.

25. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of the provisions of this Act in relation to the limitation of actions.

As to Debts alleged by way of Set-off.

26. This Act shall be deemed and taken to apply to the case of any debt alleged by way of set-off on the part of any defendant.

Memorandums not to require Stamps.

27. No memorandum or other writing made necessary by this Act shall be deemed to be an agreement within the meaning of any statute relating to the duties on stamps.

The Railway and Canal Traffic Act, 1854.

17 & 18 Vict.

Cap. XXXI.

An act for the better regulation of the traffic on railways and canals (10th July 1854).

Company to be liable for Neglect or Default in the Carriage of Goods, notwithstanding Notice to the contrary. — Company not to be liable beyond a limited Amount in certain Cases, unless the Value declared and extra Payment made.

7. Every such company as aforesaid¹⁾ shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void: Provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any the said animals, articles, goods, or things, as shall be adjudged by the court or judge before whom any question relating thereto shall be tried to be just and reasonable: Provided always, that no greater damages shall be recovered for the loss of or for any injury done to any of such animals, beyond the sums herein-after mentioned; (that is to say,) for any horse fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned, a reasonable per-centage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such per-centage or increased rate of charge shall be notified in the manner prescribed in the statute eleventh George Fourth and first William Fourth, chapter sixty-eight, and shall be binding upon such company in the manner therein mentioned: Provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: Provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage: Provided also,

¹⁾ I. e. every railway company, canal company, and railway and canal company.

that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said Act of the eleventh George Fourth and first William Fourth, chapter sixty-eight, with respect to articles of the descriptions mentioned in the said Act.

Bills of Lading Act.

18 & 19 Vict.

Cap. CXI.

An Act to amend the Law relating to Bills of Lading (14th August 1855).

Whereas by the custom of merchants a bill of lading of goods being transferable by endorsement the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property: And whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Rights under Bills of Lading to vest in consignee or endorsee.

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect right of stoppage in transitu or claims for freight.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Bill of Lading in hands of consignee, &c., conclusive evidence of the shipment as against Master, &c. — Proviso.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

The Mercantile Law Amendment Act, 1856.

19 & 20 Vict.

Cap. XCVII.

An act to amend the laws of England and Ireland affecting trade and commerce (29th July 1856).

1 & 2. (*Repealed, 56 & 57 Vict. c. 71, s. 60.*)

Consideration for Guarantee need not appear by Writing.

3. No special promise to be made by any person after the passing of this Act to answer for the debt, default, or miscarriage of another person, being in writing and signed by the party to be charged therewith or some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

4. (*Repealed, 53 & 54 Vict. c. 39, s. 48.*)

A Surety who discharges the Liability to be entitled to Assignment of all Securities held by the Creditor.

5. Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity to use the name of the creditor, in any action or other proceeding, at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: Provided always, that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable.

6 & 7. (*Repealed, 45 & 46 Vict. c. 61, s. 96.*)

With reference to the Repairs of Ships, every Port within the United Kingdom, &c. a Home Port.

8. In relation to the rights and remedies of persons having claims for repairs done to, or supplies furnished to or for, ships, every port within the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the Islands adjacent to any of them, being part of the dominions of Her Majesty, shall be deemed a home port.

Limitation of Actions for "Merchants' Accounts".

9. All actions of account or for not accounting, and suits for such accounts, as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within six years after the cause of such actions or suits, or when such cause has already arisen then within six years after the passing of this Act; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit.

Absence beyond Seas or Imprisonment of a Creditor not to be a Disability.

10. No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same shall be brought

is fixed by the Act of the twenty-first year of the reign of king James the First, chapter sixteen, section three, or by the Act of the fourth year of the reign of queen Anne, chapter sixteen, section seventeen, or by the Act of the fifty-third year of the reign of king George the Third, chapter one hundred and twenty-seven, section five, or by the Acts of the third and fourth years of the reign of king William the Fourth, chapter twenty-seven, sections forty, forty-one, and forty-two, and chapter forty-two, section three, or by the Act of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and thirteen, section twenty, shall be entitled to any time within which to commence and sue such action or suit beyond the period so fixed for the same by the enactments aforesaid, by reason only of such person, or some one or more of such persons, being at the time of such cause of action or suit accrued beyond the seas, or in the cases in which by virtue of any of the aforesaid enactments imprisonment is now a disability, by reason of such person or some one or more of such persons being imprisoned at the time of such cause of action or suit accrued.

Period of Limitation to run as to Joint Debtors in the Kingdom, though some are beyond Seas. — Judgment recovered against Joint Debtors in the Kingdom to be no Bar to proceeding against others beyond Seas after their Return.

11. Where such cause of action or suit with respect to which the period of limitation is fixed by the enactments aforesaid or any of them lies against two or more joint debtors, the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas, and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond seas at the time the cause of action or suit accrued after his or their return from beyond seas, by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not beyond seas at the time aforesaid.

Definition of "beyond Seas," within 4 & 5 Anne, c. 16. and this Act.

12. No part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any Islands adjacent to any of them, being part of the dominions of Her Majesty, shall be deemed to be beyond seas within the meaning of the Act of the fourth and fifth years of the reign of Queen Anne, chapter sixteen, or of this Act.

Provisions of 9 G. 4. c. 14. ss. 1. & 8. and 16 & 17 Vict. c. 113. ss. 24 & 27. extended to Acknowledgments by Agents.

13. In reference to the provisions of the Acts of the ninth year of the reign of King George the Fourth, chapter fourteen, sections one and eight, and the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and thirteen, sections twenty-four and twenty-seven, an acknowledgment or promise made or contained by or in a writing signed by an agent of the party chargeable thereby, duly authorized to make such acknowledgment or promise, shall have the same effect as if such writing had been signed by such party himself.

Part Payment by one Contractor, &c. not to prevent Bar by certain Statutes of Limitations in favour of another Contractor, &c.

14. In reference to the provisions of the Acts of the twenty-first year of the reign of King James the First, chapter sixteen, section three, and of the Act of the third and fourth years of the reign of King William the Fourth, chapter forty-two, section three, and of the Act of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and thirteen, section twenty, when there shall be two or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor, or administrator shall lose the benefit of the said enactments or any of them, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money, by any other or others of such co-contractors or co-debtors, executors, or administrators.

15. (*Repealed, S. L. R. Act, 1894.*)

Short Title.

16. In citing this Act it shall be sufficient to use the expression "The Mercantile Law Amendment Act, 1856."

Extent of Act.

17. Nothing in this Act shall extend to Scotland.

24 & 25 Vict. c. CXXI.

Administration by foreign consuls of effects of deceased aliens.

4. Whenever a convention shall be made between Her Majesty and any foreign State whereby Her Majesty's consuls or vice-consuls in such foreign State shall receive the same or the like powers and authorities as are herein-after expressed, it shall be lawful for Her Majesty by Order in Council to direct, and from and after the publication of such Order in the London Gazette it shall be and is hereby enacted, that whenever any subject of such foreign State shall die within the dominions of Her Majesty, and there shall be no person present at the time of such death who shall be rightfully entitled to administer to the estate of such deceased person, it shall be lawful for the consul, vice-consul, or consular agent of such foreign State within that part of Her Majesty's dominions where such foreign subject shall die, to take possession and have the custody of the personal property of the deceased, and to apply the same in payment of his or her debts and funeral expenses, and to retain the surplus for the benefit of the persons entitled thereto; but such consul, vice-consul, or consular agent shall immediately apply for and shall be entitled to obtain from the proper Court letters of administration of the effects of such deceased person, limited in such manner and for such time as to such Court shall seem fit.

Innkeepers' Liability Act, 1863.

26 & 27 Vict.

Cap. XLI.

An Act to amend the Law respecting the Liability of Innkeepers, and to prevent certain Frauds upon them (13th July 1863).**Innkeeper not to be liable for Loss, &c. beyond £30, except in certain Cases.**

1. No innkeeper shall, after the passing of this Act, be liable to make good to any guest of such innkeeper any loss of or injury to goods or property brought to his inn, not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than the sum of thirty pounds, except in the following cases; (that is to say,)

1. Where such goods or property shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ;
2. Where such goods or property shall have been deposited expressly for safe custody with such innkeeper.

Provided always, that in the case of such deposit it shall be lawful for such innkeeper, if he think fit, to require, as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same.

Obligation to receive Property of Guests for safe Custody.

2. If any innkeeper shall refuse to receive for safe custody, as before mentioned, any goods or property of his guest, or if any such guest shall, through any default of such innkeeper, be unable to deposit such goods or property as aforesaid, such innkeeper shall not be entitled to the benefit of this Act in respect of such goods or property.

Notice of Law, &c. to be conspicuously exhibited.

3. Every innkeeper shall cause at least one copy of the First Section of this Act, printed in plain type, to be exhibited in a conspicuous part of the hall or entrance to his Inn, and he shall be entitled to the benefit of this Act in respect of such goods or property only as shall be brought to his inn while such copy shall be so exhibited.

Interpretation of Terms.

4. The words and expressions herein-after contained, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; that is to say, the word "Inn" shall mean any hotel, inn, tavern, public house, or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his guests; and the word "Innkeeper" shall mean the keeper of any such place.

The Bills of Exchange (Ireland) Act, 1864.

27 & 28 Vict.

Cap. VII.

Notaries in Ireland not required to attend after 6 o'Clock in the Afternoon to receive Payment of any Bill or Note.

2. From and after the passing of this act, it shall not be necessary for any notary public in Ireland, or any person for him, at his house or office, to be in attendance after the hour of six of the clock in the afternoon of any day, in order to receive payment of any bill or note; but every such bill or note whereof payment shall not be made or duly or legally tendered at or before such hour of six of the clock in the afternoon shall be considered to be and shall be dishonoured, to all intents and purposes; and thereupon such notary public shall and may note or protest the same for nonpayment, any law, statute, or usage to the contrary notwithstanding.

Carriers Act Amendment Act, 1865.

28 & 29 Vict.

Cap. XCIV.

An act to amend the Carriers Act (5th July 1865).

The term "Lace" in 11 G. 4. & 1 W. 4. c. 68. not to include machine-made lace.

1. In the Carriers Act (that is to say, the Act of the session held in the eleventh year of the reign of King George the fourth and the first year of the reign of King William the fourth, chapter sixty-eight, "for the more effectual protection of mail contractors, stage coach proprietors, and other common carriers for hire, against the loss of or injury to parcels or packages delivered to them for conveyance or custody, the value and contents of which shall not be declared to them by the owners thereof,") the term "lace" shall, with respect to any parcel or package delivered after the commencement of this Act, be construed as not including machine-made lace.

Commencement of Act.

2. This Act shall commence from and immediately after the thirtieth day of September one thousand eight hundred and sixty-five.

Short title.

3. This Act may be cited as the Carriers Act Amendment Act, 1865.

The Banking Companies (Shares) Act, 1867.

30 & 31 Vict.

Cap. XXIX.

An act to amend the law in respect of the sale and purchase of shares in joint stock banking companies (17th June 1867).

Contracts for Sale, &c. of Shares to be void unless the Numbers by which such Shares are distinguished are set forth in Contract.

1. All contracts, agreements, and tokens of sale and purchase which shall be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or of any stock or other interest, in any joint stock banking company in the United Kingdom of Great Britain and Ireland constituted under or regulated by the provisions of any act of parliament, royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever, unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanour, and be punished accordingly, and, if in Scotland, shall be guilty of an offence punishable by fine or imprisonment.

Registered Shareholders may see Lists.

2. Joint stock banking companies shall be bound to show their list of shareholders to any registered shareholder during business hours, from ten of the clock to four of the clock.

Extent of Act limited.

3. This Act shall not extend to shares or stock in the Bank of England or the Bank of Ireland.

The Bank Holidays Act, 1871.

34 & 35 Vict.

Cap. XVII.

An Act to make Provision for Bank Holidays, and respecting Obligations to make Payments and do other acts on such Bank Holidays (25th May 1871).

Bills due on bank holidays to be payable on the following day.

1. After the passing of this Act, the several days in the schedule to this Act mentioned (and which days are in this Act hereinafter referred to as bank holidays) shall be kept as close holidays in all banks in England and Ireland and Scotland respectively, and all bills of exchange and promissory notes which are due and payable on any such bank holiday shall be payable, and in case of non-payment may be noted and protested, on the next following day, and not on such bank holiday; and any such noting or protest shall be as valid as if made on the day on which the bill or note was made due and payable; and for all the purposes of this act the day next following a bank holiday shall mean the next following day on which a bill of exchange may be lawfully noted or protested.

Provision as to notice of dishonour and presentation for honour.

2. When the day on which any notice of dishonour of an unpaid bill of exchange or promissory note should be given, or when the day on which a bill of exchange or promissory note should be presented or received for acceptance, or accepted or forwarded to any referee or referees, is a bank holiday, such notice of dishonour shall be given and such bill of exchange or promissory note shall be presented or forwarded on the day next following such bank holiday.

As to any payments on bank holidays.

3. No person shall be compellable to make any payment or to do any act upon such bank holidays which he would not be compellable to do or make on Christmas Day or Good Friday; and the obligation to make such payment and do such act shall apply to the day following such bank holiday; and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday.

Appointment of special bank holidays by royal proclamation.

4. It shall be lawful for her Majesty, from time to time, as to her Majesty may seem fit, by proclamation, in the manner in which solemn fasts or days of public thanksgiving may be appointed, to appoint a special day to be observed as a bank holiday, either throughout the United Kingdom or in any part thereof, or in any county, city, borough or district therein, and any day so appointed shall be kept as a close holiday in all banks within the locality mentioned in such proclamation, and shall, as regards bills of exchange and promissory notes payable in such locality, be deemed to be a bank holiday for all the purposes of this Act.

Day appointed for bank holiday may be altered by Order in Council.

5. It shall be lawful for her Majesty in like manner, from time to time, when it is made to appear to her Majesty in council in any special case that in any year it is inexpedient that a day by this Act appointed for a bank holiday should be a bank holiday, to declare that such day shall not in such year be a bank holiday, and to appoint such other day as to her Majesty in council may seem fit to be a bank holiday instead of such day, and thereupon the day so appointed shall in such year be substituted for the day so appointed by this Act.

6. (*Repealed by s. 3. of 38 & 39 Vict. c. 13.*)

7. This Act may be cited for all purposes as The Bank Holidays Act 1871.

Schedule.

Bank Holidays in England and Ireland.

Easter Monday.
The Monday in Whitsun week.
The first Monday in August.
The twenty-sixth day of December, if a *week day*.

Bank Holidays in Scotland.

New Year's Day.
Christmas Day.
If either of the above days falls on a Sunday, the next following Monday shall be a bank holiday.
Good Friday.
The first Monday of May.
The first Monday of August.

The Infants Relief Act, 1874.

37 & 38 Vict.

Cap. LXII.

**An act to amend the Law as to the Contracts of Infants
(7th August 1874).**

Contracts by infants, except for necessities, to be void.

1. All contracts, whether by speciality or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods

supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void: Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.

No action to be brought on ratification of infant's contract.

2. No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age¹).

Short title.

3. This Act may be cited as the Infants Relief Act, 1874.

Holidays Extension Act, 1875.

38 & 39 Vict.

Cap. XIII.

Days mentioned in schedule to be holidays.

1. From and after the passing of this Act, the several days and each and every of them in the schedule to this Act mentioned, being holidays under the Holidays Act of 1871, shall be kept as public holidays in the customs, inland revenue offices, and bonding warehouses in England and Ireland respectively; and it shall be lawful for the directors or governing body (by whatever name known) of any dock or docks in England and Ireland respectively to cause the said days or any of them to be kept as holidays in such dock or docks, any restraining clause in any Act of Parliament notwithstanding: Provided that such directors or governing body shall give notice thereof by inserting an advertisement to that effect in some newspaper circulating in the locality of such dock or docks, and by affixing to the principal gates of the said dock or docks, or to some conspicuous place in the immediate neighbourhood, a notice to the same effect for at least a week immediately preceding any day which it is intended to observe as a holiday under this Act; and the anniversary of the coronation of her Majesty and her successors, and the birthday of the Prince of Wales, shall no longer be kept as holidays in any inland revenue office in England or Ireland.

26th December falling on Sunday.

2. Whenever the 26th day of December shall fall on a Sunday, the Monday immediately next following, that is to say, the 27th day of December, shall be a holiday under this Act, and also under the Holidays Act of 1871.

Exercise of powers by Lord Lieutenant of Ireland.

3. The powers conferred on her Majesty by sections 4 and 5 of the Holidays Act of 1871, may be exercised in Ireland as far as relates to that part of the United Kingdom, by the Lord Lieutenant in Council, and those powers of her Majesty and of the Lord Lieutenant in Council shall extend to holidays under this Act.

Short title.

4. This Act may be cited for all purposes as "The Holidays Extension Act, 1875".

Schedule.

Easter Monday.

Monday in Whitsun week.

The first Monday in August.

The 26th of December (if a week day).

¹) See 55 & 56 Vict. c. 4, *infra*.

Innkeepers Act, 1878.

41 & 42 Vict.

Cap. XXXVIII.

An Act for the further relief of Innkeepers (8th August 1878).**Landlord, &c. may dispose of goods left with him after six weeks.**

1. The landlord, proprietor, keeper, or manager of any hotel, inn, or licensed public-house shall, in addition to his ordinary lien, have the right absolutely to sell and dispose by public auction of any goods, chattels, carriages, horses, wares, or merchandise which may have been deposited with him or left in the house he keeps, or in the coach-house, stable, stable-yard, or other premises appurtenant or belonging thereunto, where the person depositing or leaving such goods, chattels, carriages, horses, wares, or merchandise shall be or become indebted to the said innkeeper either for any board or lodging or for the keep and expenses of any horse or other animals left with or standing at livery in the stables or fields occupied by such innkeeper.

Provided that no such sale shall be made until after the said goods, chattels, carriages, horses, wares, or merchandise shall have been for the space of six weeks in such charge or custody or in or upon such premises without such debt having been paid or satisfied, and that such innkeeper, after having, out of the proceeds of such sale, paid himself the amount of any such debt, together with the costs and expenses of such sale, shall on demand pay to the person depositing or leaving any such goods, chattels, carriages, horses, wares, or merchandise the surplus (if any) remaining after such sale: Provided further, that the debt for the payment of which a sale is made shall not be any other or greater debt than the debt for which the goods or other articles could have been retained by the innkeeper under his lien.

Provided also, that at least one month before any such sale the landlord, proprietor, keeper, or manager shall cause to be inserted in one London newspaper and one country newspaper circulating in the district where such goods, chattels, carriages, horses, wares, or merchandise, or some of them, shall have been deposited or left, an advertisement containing notice of such intended sale, and giving shortly a description of the goods and chattels intended to be sold, together with the name of the owner or person who deposited or left the same where known.

Short title.

2. This Act may be cited as the Innkeepers Act, 1878.

Conveyancing and Law of Property Act, 1881.

44 & 45 Vict.

Cap. XLI.

Power of attorney of married woman.

40. 1. A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

Execution under power of attorney.

46. 1. The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

Payment by attorney under power without notice of death, etc., good.

47. 1. Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.
2. But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

Conveyancing Act, 1882.

45 & 46 Vict.

Cap. XXXIX.

Effect of power of attorney, for value, made absolutely irrevocable.

8. If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser:

1. The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and
2. Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and
3. Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

9. If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser:

1. The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and
2. Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and
3. Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done, by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

Bills of Exchange Act, 1882.

45 & 46 Vict.

Cap. LXI.

An act to codify the law relating to bills of exchange, cheques, and promissory notes (18th August 1882).

Part I. Preliminary.**Short title.**

1. This Act may be cited as the Bills of Exchange Act, 1882.

Interpretation of terms.

2. In this Act, unless the context otherwise requires,—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and set-off.

“Banker” includes a body of persons whether incorporated or not who carry on the business of banking.

“Bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

“Person” includes a body of persons whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

Part II. Bills of Exchange.**Form and Interpretation.****Bill of exchange defined.**

3. 1. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.
2. An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.
3. An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with
 - a) An indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or
 - b) A statement of the transaction which gives rise to the bill, is unconditional.
4. A bill is not invalid by reason—
 - a) That it is not dated;
 - b) That it does not specify the value given, or that any value has been given therefor;
 - c) That it does not specify the place where it is drawn or the place where it is payable.

Inland and foreign bills.

4. 1. An inland bill is a bill which is or on the face of it purports to be
 - a) Both drawn and payable within the British Islands, or

- b) Drawn within the British Islands upon some person resident therein.
Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

2. Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person.

5. 1. A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.
2. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Address to drawee.

6. 1. The drawee must be named or otherwise indicated in a bill with reasonable certainty.
2. A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

Certainty required as to payee.

7. 1. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.
2. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.
3. Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable.

8. 1. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.
2. A negotiable bill may be payable either to order or to bearer.
3. A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.
4. A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.
5. Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable.

9. 1. The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—
a) With interest;
b) By stated instalments;
c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;
d) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.
2. Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.
3. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

Bill payable on demand.

10. 1. A bill is payable on demand—

- a) Which is expressed to be payable on demand, or at sight, or on presentation; or
 - b) In which no time for payment is expressed.
2. Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Bill payable at a future time.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

1. At a fixed period after date or sight.
2. On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that 1. where the holder in good faith and by mistake inserts a wrong date, and 2. in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and post-dating.

13. 1. Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.
2. A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment.

14. Where a bill is not payable on demand the day on which it falls due is determined as follows—

1. Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—
 - a) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case herein-after provided for, due and payable on the preceding business day;
 - b) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.
2. Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.
3. Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.
4. The term "month" in a bill means calendar month.

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the

bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

1. Negating or limiting his own liability to the holder.
2. Waiving as regards himself some or all of the holder's duties.

Definition and requisites of acceptance.

17. 1. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.
2. An acceptance is invalid unless it complies with the following conditions, namely:
 - a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient;
 - b) It must not express that the drawee will perform his promise by any other means than the payment of money.

Time for acceptance.

18. A bill may be accepted—

1. Before it has been signed by the drawer, or while otherwise incomplete.
2. When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.
3. When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

General and qualified acceptances.

19. 1. An acceptance is either a) general or b) qualified.
2. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

- a) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
- b) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- c) Local, that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere;

- d) Qualified as to time;
- e) The acceptance of some one or more of the drawees, but not of all.

Inchoate Instruments.

20. 1. Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

2. In order that such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery.

21. 1. Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

2. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

- a) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;
- b) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

3. Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties.**Capacity of parties.**

22. 1. Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

2. Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that—

1. Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;
2. The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorised signature.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

Procurator signatures.

25. A signature by procurator operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Person signing as agent or in representative capacity.

26. 1. Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

2. In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill.

Value and holder for value.

27. 1 Valuable consideration for a bill may be constituted by—
 - a) Any consideration sufficient to support a simple contract;
 - b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.
2. Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.
3. Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation bill or party.

28. 1. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.
2. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in due course.

29. 1. A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely:—
 - a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;
 - b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.
2. In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.
3. A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith.

30. 1. Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.
2. Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills.

Negotiation of bill.

31. 1. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.
2. A bill payable to bearer is negotiated by delivery.
3. A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

4. Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.
5. Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

1. It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.
An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.
2. It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.
3. Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.
4. Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.
5. Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.
6. An indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Indorsement in blank and special indorsement.

34. 1. An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.
2. A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.
3. The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.
4. When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

Restrictive indorsement.

35. 1. An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection".
2. A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.
3. Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of overdue or dishonoured bill.

36. 1. Where a bill is negotiable in its origin it continues to be negotiable until it has been a) restrictively indorsed or b) discharged by payment or otherwise.
2. Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.
3. A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.
4. Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.
5. Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

Negotiation of bill to party already liable thereon.

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the holder.

38. The rights and powers of the holder of a bill are as follows:—

1. He may sue on the bill in his own name.
2. Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.
3. Where his title is defective
 - a) If he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and
 - b) If he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General duties of the Holder.**When presentment for acceptance is necessary.**

39. 1. Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
2. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.
3. In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
4. Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise or reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight.

40. 1. Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
2. If he do not do so, the drawer and all indorsers prior to that holder are discharged.

3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance, and excuses for non-presentment.

41. 1. A bill is duly presented for acceptance which is presented in accordance with the following rules:—
- a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue;
 - b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only;
 - c) Where the drawee is dead presentment may be made to his personal representative;
 - d) Where the drawee is bankrupt, presentment may be made to him or to his trustee;
 - e) Where authorised by agreement or usage, a presentment through the post office is sufficient.
2. Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—
- a) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill;
 - b) Where, after the exercise of reasonable diligence, such presentment cannot be effected;
 - c) Where although the presentment has been irregular, acceptance has been refused on some other ground.
3. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance.

42. When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

43. 1. A bill is dishonoured by non-acceptance—
- a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
 - b) When presentment for acceptance is excused and the bill is not accepted.
2. Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

44. 1. The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.
2. Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

3. When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to presentment for payment.

45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:—

1. Where the bill is not payable on demand, presentment must be made on the day it falls due.
2. Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.
In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.
3. Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as herein-after defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.
4. A bill is presented at the proper place—
 - a) Where a place of payment is specified in the bill and the bill is there presented;
 - b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;
 - c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known;
 - d) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.
5. Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
6. Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
7. Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.
8. Where authorised by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.

46. 1. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.
2. Presentment for payment is dispensed with,—
 - a) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected.
The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment;
 - b) Where the drawee is a fictitious person;
 - c) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
 - d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser and he has no reason to expect that the bill would be paid if presented;
 - e) By waiver of presentment, express or implied.

Dishonour by non-payment.

47. 1. A bill is dishonoured by non-payment
 - a) When it is duly presented for payment and payment is refused or cannot be obtained, or
 - b) When presentment is excused and the bill is overdue and unpaid.

2. Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

1. Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.
2. Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

1. The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.
2. Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.
3. Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
4. Where notice is given by or on behalf of an indorser entitled to give notice as herein-before provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
5. The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
6. The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
7. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
8. Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
9. Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.
10. Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.
11. Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
12. The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless —

- a) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;
- b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.
13. Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice

to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

14. Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.
15. Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay.

50. 1. Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.
2. Notice of dishonour is dispensed with—
 - a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;
 - b) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice;
 - c) As regards the drawer in the following cases, namely.
 1. Where drawer and drawee are the same person.
 2. Where the drawee is a fictitious person or a person not having capacity to contract.
 3. Where the drawer is the person to whom the bill is presented for payment.
 4. Where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill.
 5. Where the drawer has countermanded payment.
 - d) As regards the indorser in the following cases, namely.
 1. Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill.
 2. Where the indorser is the person to whom the bill is presented for payment.
 3. Where the bill was accepted or made for his accommodation.

Noting or protest of bill.

51. 1. Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.
2. Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.
3. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.
4. Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.
5. Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.
6. A bill must be protested at the place where it is dishonoured: Provided that—

- a) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day;
- b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.
7. A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—
 - a) The person at whose request the bill is protested;
 - b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.
8. Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.
9. Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder as regards drawee or acceptor.

52. 1. When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.
2. When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.
3. In order to render the acceptor of a bill liable it is not necessary to protest it, or the notice of dishonour should be given to him.
4. Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties.

Funds in hands of drawee.

53. 1. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.
2. In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of acceptor.

54. The acceptor of a bill, by accepting it—
 1. Engages that he will pay it according to the tenor of his acceptance;
 2. Is precluded from denying to a holder in due course—
 - a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;
 - b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;
 - c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser.

55. 1. The drawer of a bill by drawing it—

- a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

2. The indorser of a bill by indorsing it—

- a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;
- c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing bill liable as indorser.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Measure of damages against parties to dishonoured bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:—

- 1. The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—
 - a) The amount of the bill;
 - b) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;
 - c) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.
- 2. In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.
- 3. Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transferor by delivery and transferee.

- 58. 1. Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery".
- 2. A transferor by delivery is not liable on the instrument.
- 3. A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill.**Payment in due course.**

- 59. 1. A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

2. Subject to the provisions herein-after contained, when a bill is paid by the drawer or an indorser it is not discharged; but
 - a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;
 - b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.
3. Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying demand draft whereon indorsement is forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor the holder at maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver.

62. 1. When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.
The renunciation must be in writing, unless the bill is delivered up to the acceptor.
2. The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63. 1. Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.
2. In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.
3. A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill.

64. 1. Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that:

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenour.

2. In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour.

Acceptance for honour *suprà* protest.

65. 1. Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.
2. A bill may be accepted for honour for part only of the sum for which it is drawn.
3. An acceptance for honour *suprà* protest in order to be valid must—
- a) Be written on the bill, and indicate that it is an acceptance for honour;
 - b) Be signed by the acceptor for honour.
4. Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.
5. Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of acceptor for honour.

66. 1. The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.
2. The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Presentment to acceptor for honour.

67. 1. Where a dishonoured bill has been accepted for honour *suprà* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.
2. Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.
3. Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.
4. When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

Payment for honour *suprà* protest.

68. 1. Where a bill has been protested for non-payment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.
2. Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.
3. Payment for honour *suprà* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.
4. The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.
5. Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

6. The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.
7. Where the holder of a bill refuses to receive payment *suprà* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

Holder's right to duplicate of lost bill.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set.

Rules as to sets.

71. 1. Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.
2. Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.
3. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.
4. The acceptance may be written on any part, and it must be written on one part only.
If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.
5. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.
6. Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws.

Rules where laws conflict.

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:—

1. The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *suprà* protest, is determined by the law of the place where such contract was made. Provided that—
a) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

- b) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.
2. Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *suprà protest* of a bill, is determined by the law of the place where such contract is made.
 Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.
3. The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.
4. Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.
5. Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

Part III. Cheques on a Banker.

Cheque defined.

73. A cheque is a bill of exchange drawn on a banker payable on demand. Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment.

74. Subject to the provisions of this Act:

1. Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.
2. In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
3. The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation of banker's authority.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by:

1. Countermand of payment;
2. Notice of the customer's death.

Crossed Cheques.

General and special crossings defined.

76. 1. Where a cheque bears across its face an addition of:
- a) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or
 - b) Two parallel transverse lines simply, either with or without the words "not negotiable"; or
- that addition constitutes a crossing, and the cheque is crossed generally.

2. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by drawer or after issue.

77. 1. A cheque may be crossed generally or specially by the drawer.
2. Where a cheque is uncrossed, the holder may cross it generally or specially.
3. Where a cheque is crossed generally the holder may cross it specially.
4. Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".
5. Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.
6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Crossing a material part of cheque.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Duties of banker as to crossed cheques.

79. 1. Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.
2. Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to banker and drawer where cheque is crossed.

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Effect of crossing on holder.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable", he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Protection to collecting banker.

82.1) Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

¹⁾ Amended, 6 Edw. 7, c. 17, *infra*.

Part IV. Promissory Notes.

Promissory note defined.

83. 1. A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.
2. An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.
3. A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.
4. A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

Delivery necessary.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Joint and several notes.

85. 1. A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenour.
2. Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

Note payable on demand.

86. 1. Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.
2. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.
3. Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment.

87. 1. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.
2. Presentment for payment is necessary in order to render the indorser of a note liable.
3. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

88. The maker of a promissory note by making it:

1. Engages that he will pay it according to its tenour.
2. Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of Part II. to notes.

89. 1. Subject to the provisions in this Part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.
2. In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

3. The following provisions as to bills do not apply to notes; namely, provisions relating to:
 - a) Presentment for acceptance;
 - b) Acceptance;
 - c) Acceptance *suprà* protest;
 - d) Bills in a set.
4. Where a foreign note is dishonoured, protest thereof is unnecessary.

Part V. Supplementary.

Good faith.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

Signature.

91. 1. Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.
2. In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Computation of time.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purposes of this Act mean:

- a) Sunday, Good Friday, Christmas Day;
 - b) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it;
 - c) A day appointed by Royal proclamation as a public fast or thanksgiving day.
- Any other day is a business day.

When noting equivalent to protest.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when notary not accessible.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants may be crossed.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

96. (*Repealed, S. L. R. Act, 1898.*)

Savings.

97. 1. The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.
2. The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

3. Nothing in this Act or in any repeal in effected thereby shall affect—
- a) Any law or enactment for the time being in force relating to the revenue;
 - b) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies;
 - c) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively;
 - d) The validity of any usage relating to dividend warrants, or the indorsements thereof.

Saving of summary diligence in Scotland.

98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

Construction with other Acts, &c.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parol evidence allowed in certain judicial proceedings in Scotland.

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parol evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenour of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignment, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

Schedules.

First Schedule.

Form of protest which may be used when the services of a notary cannot be obtained.

94. Know all men that I, A. B. (householder), of in the county of, in the United Kingdom, at the request of C. D., there being no notary public available, did on the day of 188.. at demand payment (or acceptance) of the bill of exchange hereunder written, from E. F., to which demand he made answer (state answer, if any) wherefore I now, in the presence of G. H. and J. K. do protest the said bill of exchange.

(Signed) A. B.
 G. H. }
 J. K. } Witnesses.

NB. The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

Second Schedule.

(*Repealed, S. L. R. Act, 1898.*)

The Married Women's Property Act, 1882.

45 & 46 Vict.

Cap. LXXV.

An Act to consolidate and amend the Acts relating to the Property of Married Women (18th August 1882).

Married woman to be capable of holding property and of contracting as a feme sole.

1. 1. A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.
2. A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.
3. & 4. (*Repealed, 56 & 57 Vict. c. 63, s. 4.*)
5. Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole.

Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Wife's antenuptial debts and liabilities.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife,

after deducting there from any payments made by him, and any sums for which judgment may have been bona fide recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

Suits for ante-nuptial liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

Extent of Act.

26. This Act shall not extend to Scotland.

The Bankruptcy Act, 1883.

46 & 47 Vict.

Cap. LII.

**An Act to amend and consolidate the Law of Bankruptcy
(25th August 1883).**

Preliminary.

Short title.

1. This Act may be cited as the Bankruptcy Act, 1883.

Extent of Act.

2. This Act shall not, except so far as is expressly provided, extend to Scotland or Ireland.

Commencement of Act.

3. (*Repealed by 61 & 62 Vict. c. 22.*)

Part I. Proceedings from Act of Bankruptcy to Discharge.

Acts of Bankruptcy.

Acts of bankruptcy.

4. 1. A debtor commits an act of bankruptcy in each of the following cases:
- a) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;
 - b) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;

- c) If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt;
 - d) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house;
 - e) (*Repealed by the Bankruptcy Act 1890, § 29*);
 - f) If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;
 - g) If a creditor has obtained a final judgment against him for any amount, and execution thereon not having been stayed, has served on him in England, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice, or satisfy the Court that he has a counterclaim, set-off or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained;
 - h) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.
2. A bankruptcy notice under this Act shall be in the prescribed form, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner.

Receiving Order.

Jurisdiction to make receiving order.

5. Subject to the conditions herein-after specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

Conditions on which creditor may petition.

- 6. 1. A creditor shall not be entitled to present a bankruptcy petition against a debtor unless:
 - a) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to fifty pounds; and
 - b) The debt is a liquidated sum, payable either immediately or at some certain future time; and
 - c) The act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and
 - d) The debtor is domiciled in England, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in England.
- 2. If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

Proceedings and order on creditor's petition.

- 7. 1. A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

2. At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may make a receiving order in pursuance of the petition.
3. If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.
4. When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment.
5. Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may instead of dismissing the petition stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.
6. Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.
7. A creditor's petition shall not, after presentment, be withdrawn without the leave of the Court.

Debtor's petition and order thereon.

8. 1. A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order.
2. A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court.

Effect of receiving order.

9. 1. On the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.
2. But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Discretionary powers as to appointment of receiver and stay of proceedings.

10. 1. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.
2. The Court may at any time after the presentation of a bankruptcy petition stay any action, execution, or other legal process against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

Service of order staying proceedings.

11. Where the Court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the Court, by prepaid post letter to the address for service of the plaintiff or other party prosecuting such proceeding.

Power to appoint special manager.

12. 1. The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.
2. The special manager shall give security and account in such manner as the Board of Trade may direct.
3. The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or in default of any such resolution, as may be prescribed.

Advertisement of receiving order.

13. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, the Court by which the order is made, and the date of the petition, shall be gazetted and advertised in a local paper in the prescribed manner.

Power to Court to annul receiving order in certain cases.

14. If in any case where a receiving order has been made on a bankruptcy petition it shall appear to the Court by which such order was made, upon an application by the official receiver, or any creditor or other person interested, that a majority of the creditors in number and value are resident in Scotland or in Ireland, and that from the situation of the property of the debtor, or other causes, his estate and effects ought to be distributed among the creditors under the Bankrupt or Insolvent Laws of Scotland or Ireland, the said Court, after such inquiry as to it shall seem fit, may rescind the receiving order and stay all proceedings on, or dismiss the petition upon such terms, if any, as the Court may think fit.

Proceedings consequent on Order.**First and other meetings of creditors.**

15. 1. As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.
2. With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the First Schedule shall be observed.

Debtor's statement of affairs.

16. 1. Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.
2. The statement shall be so submitted within the following times, namely:
- a) If the order is made on the petition of the debtor, within three days from the date of the order;
 - b) If the order is made on the petition of a creditor, within seven days from the date of the order.

But the Court may, in either case, for special reasons, extend the time.

3. If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.
4. Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect this statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

Public Examination of Debtor.

Public examination of debtor.

17. 1. Where the Court makes a receiving order it shall hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.
2. The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.
3. The Court may adjourn the examination from time to time.
4. Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.
5. The official receiver shall take part in the examination of the debtor; and for the purpose thereof, if specially authorised by the Board of Trade, may employ a solicitor with or without counsel.
6. If a trustee is appointed before the conclusion of the examination he may take part therein.
7. The Court may put such questions to the debtor as it may think expedient.
8. The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.
9. When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

Composition or Scheme of Arrangement.

Power for creditors to accept and Court to approve composition or arrangement.

18. (*Repealed by s. 29 of the Bankruptcy Act 1890.*)

Effect of composition or scheme.

19. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Adjudication of Bankruptcy.

Adjudication of bankruptcy where composition not accepted or approved.

20. 1. Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

2. Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, and the Court by which the adjudication is made, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall for the purposes of this Act be the date of the adjudication.

Appointment of trustee.

21. 1. Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection herein-after mentioned.
2. The person so appointed shall give security in manner prescribed to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.
3. Provided that where the Board make any such objection they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide on its validity.
4. The appointment of a trustee shall take effect as from the date of the certificate.
5. The official receiver shall not, save as by this Act provided, be the trustee of the bankrupt's property.
6. If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the official receiver shall report the matter to the Board of Trade, and thereupon the Board of Trade shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.
7. Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified the person appointed shall become trustee in the place of the person appointed by the Board of Trade.
8. When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

Committee of inspection.

22. 1. The creditors, qualified to vote, may at their first or any subsequent meeting, by resolution, appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons.
2. The committee of inspection shall meet at such times as they shall from time to time appoint, and failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.
4. Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.

5. If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.
6. Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days notice has been given, stating the object of the meeting.
7. On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.
8. The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.
9. If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the trustee.

Power to accept composition or scheme after bankruptcy adjudication.

23. 1. Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.
2. If the Court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.
3. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Control over person and Property of Debtor.

Duties of debtor as to discovery and realization of property.

24. 1. Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.
2. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee, or any creditor or person interested.

3. He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.
4. If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

Arrest of debtor under certain circumstances.

25. 1. The Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order under the following circumstances:

- a) If after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for [believing that he has absconded or is about to abscond] with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him;

As to the words in brackets see s. 7 of the Bankruptcy Act 1890.

- b) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents, or writings, which might be of use to his creditors in the course of his bankruptcy;
- c) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of five pounds, without the leave of the official receiver or trustee;
- d) If, without good cause shown, he fails to attend any examination ordered by the Court.

Provided that no arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his arrest shall be served with such bankruptcy notice.

2. No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

Re-direction of debtor's letters.

26. Where a receiving order is made against a debtor, the Court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the debtor at any place, or places, mentioned in the order for re-direction shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, to the official receiver, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

Discovery of debtor's property.

27. 1. The Court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed

- to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.
2. If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.
 3. The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.
 4. If any person on examination before the Court admits that he is indebted to the debtor, the Court may, on the application of the official receiver or trustee, order him to pay to the receiver or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.
 5. If any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just.
 6. The Court may, if it think fit, order that any person who if in England would be liable to be brought before it under this section shall be examined in Scotland or Ireland, or in any other place out of England.

Discharge of Bankrupt.

Discharge of bankrupt.

28. (*Repealed by s. 29 of the Bankruptcy Act 1890.*)

Fraudulent settlements.

29. In either of the following cases; that is to say:

1. In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
2. In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife).

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Effect of order of discharge.

30. 1. An order of discharge shall not release the bankrupt from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence: and he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt of liability whereof he has obtained forbearance by any fraud to which he was a party.
2. An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

3. An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.
4. An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Undischarged bankrupt obtaining credit to extent of £ 20 to be guilty of misdemeanor.

31. Where an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanor, and may be dealt with and punished as if he had been guilty of a misdemeanor under the Debtors Act, 1869, and the provisions of that Act shall apply to proceedings under this section.

Part II. Disqualifications of Bankrupt.

Disqualifications of bankrupt.

32. 1. Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for —
 - a) Sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords;
 - b) Being elected to, or sitting or voting in, the House of Commons, or on any committee thereof;
 - c) Being appointed or acting as a justice of the peace;
 - d) Being elected to or holding or exercising the office of mayor, alderman, or councillor;
 - e) Being elected to or holding or exercising the office of guardian of the poor, overseer of the poor, member of a sanitary authority, or member of a school board, highway, burial board, or select vestry.
2. The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when:
 - a) The adjudication of bankruptcy against him is annulled; or
 - b) He obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

3. The disqualifications imposed by this section shall extend to all parts of the United Kingdom.

Vacating of seat in House of Commons.

33. 1. If a member of the House of Commons is adjudged bankrupt, and the disqualifications arising therefrom under this Act are not removed within six months from the date of the order, the Court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of the member shall be vacant.
2. Where the seat of a member so becomes vacant, the Speaker, during a recess of the House, whether by prorogation or by adjournment, shall forthwith, after receiving the certificate, cause notice thereof to be published in the London Gazette; and after the expiration of six days after the publication shall (unless the House has met before that day, or will meet on the day of the issue), issue his warrant to the clerk of the Crown to make out a new writ for electing another member in the room of the member whose seat has so become vacant.
3. The powers of the Act of the twenty-fourth year of the reign of King George the Third, chapter twenty-six, to repeal so much of two Acts made in the tenth and fifteenth years of the reign of His present Majesty as authorises

the Speaker of the House of Commons to issue his warrant to the clerk of the Crown for making out writs for the election of members to serve in Parliament in the manner therein mentioned; and for substituting other provisions for the like purposes", so far as those powers enable the Speaker to nominate and appoint other persons, being members of the House of Commons, to issue warrants for the making out of new writs during the vacancy of the office of Speaker or during his absence out of the realm, shall extend to enable him to make the like nomination and appointment for issuing warrants, under the like circumstances and conditions, for the election of a member in the room of any member whose seat becomes vacant under this Act.

Vacating of municipal and other offices.

34. If a person is adjudged bankrupt whilst holding the office of mayor, alderman, councillor, guardian, overseer, or member of a sanitary authority, school board, highway board, burial board, or select vestry, his office shall thereupon become vacant.

Power for Court to annul adjudication in certain cases.

35. 1. Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, by order, annul the adjudication.
2. Where an adjudication is annulled under this section all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.
3. Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper.

Meaning of payment of debts in full.

36. For the purposes of this Part of this Act, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

Part III. Administration of Property.

Proof of Debts.

Description of debts provable in bankruptcy.

37. 1. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy.
2. A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.
3. Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.
4. An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.
5. Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

6. If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.
7. If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed, before the Court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.
8. "Liability" shall for the purposes of this Act include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money, or money's worth, whether the payment is, as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or as matter of opinion.

Mutual credit and set-off.

38. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor, and available against him.

Rules as to proof of debts.

39. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that schedule shall be observed.

40. (*Subsection 1 and 2 are repealed by the Preferential Payment in Bankruptcy Act 1888.*)

3. In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.
4. Subject to the provisions of this Act all debts proved in the bankruptcy shall be paid *pari passu*.
5. If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy.
6. (*This subsection has been repealed by the Statute Law Revision Act 1898.*)

Preferential claim in case of apprenticeship.

41. 1. Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of

some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

2. Where it appears expedient to a trustee, he may, on the application of any apprentice or article clerk to the bankrupt, or any person acting on behalf of such apprentice or article clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Power to landlord to distrain for rent.

42. 1. The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for *one year's rent*¹⁾ accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.
2. For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a debtor whose debts do not exceed fifty pounds, or of a deceased person who dies insolvent.

Property available for Payment of Debts.

Relation back of trustee's title.

43. The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Description of bankrupt's property divisible amongst creditors.

44. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:

1. Property held by the bankrupt on trust for any other person.
 2. The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole.
- But it shall comprise the following particulars:
- i) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and,
 - ii) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and,
 - iii) All goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent

¹⁾ By s. 28 of the Bankruptcy Act 1890 the words "six months' rent" have been substituted for the words "one year's rent".

and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

Effect of Bankruptcy on Antecedent Transactions.

Restriction of rights of creditor under execution or attachment.

45. 1. Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.
2. For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

Duties of sheriff as to goods taken in execution.

46. (*Subsections 1 and 2 are repealed by the Bankruptcy Act 1890; see now s. 11 of the same.*)
3. An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy.

Avoidance of voluntary settlements.

47. 1. Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.
2. Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.
3. "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

Avoidance of preferences in certain cases.

48. 1. Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.
2. This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Protection of bonâ fide transactions without notice.

49. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy:

- a) Any payment by the bankrupt to any of his creditors;
- b) Any payment or delivery to the bankrupt;
- c) Any conveyance or assignment by the bankrupt for valuable consideration;
- d) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration.

Provided that both the following conditions are complied with, namely:

- 1. The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and
- 2. The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Realisation of Property.**Possession of property by trustee.**

50. 1. The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.
2. The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the High-Court, and the Court may on his application, enforce such acquisition or retention accordingly.
3. Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.
4. Where any part of the property of the bankrupt is of copyhold or customary tenure, or is any like property passing by surrender and admittance or in any similar manner, the trustee shall not be compellable to be admitted to the property, but may deal with it in the same manner as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee may appoint; and any appointee of the trustee shall be admitted to or otherwise invested with the property accordingly.
5. Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.
6. Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee.

Seizure of property of bankrupt.

51. Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt, or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court, who may execute it according to its tenor.

Sequestration of ecclesiastical benefice.

52. 1. Where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice, and the certificate of the appointment of the trustee shall be sufficient authority for the granting of sequestration without any writ or other proceeding, and the same shall accordingly be issued as on a writ of *levari facias* founded on a judgment against the bankrupt, and shall have priority over any other sequestration issued after the commencement of the bankruptcy in respect of a debt provable in the bankruptcy, except a sequestration issued before the date of the receiving order by or on behalf of a person who at the time of the issue thereof had not notice of an act of bankruptcy committed by the bankrupt, and available for grounding a receiving order against him.
2. The bishop of the diocese in which the benefice is situate may, if he thinks fit, appoint to the bankrupt such or the like stipend as he might by law have appointed to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident, and the sequestrator shall pay the sum so appointed out of the profits of the benefice to the bankrupt, by quarterly instalments while he performs the duties of the benefice.
3. The sequestrator shall also pay out of the profits of the benefice the salary payable to any duly licensed curate of the church of the benefice in respect of duties performed by him as such during four months before the date of the receiving order not exceeding fifty pounds.
4. Nothing in this section shall prejudice the operation of the Ecclesiastical Dilapidations Act, 1871, or the Sequestration Act, 1871, or any mortgage or charge duly created under any Act of Parliament before the commencement of the bankruptcy on the profits of the benefice.

Appropriation of portion of pay or salary to creditors.

53. 1. Where a bankrupt is an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this subsection the Court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment.
2. Where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half pay, or pension, or to any compensation granted by the Treasury, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half pay, pension, or compensation, or of any part thereof, to the trustee to be applied by him in such manner as the Court may direct.
3. Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half pay, or compensation of any bankrupt to be forfeited.

Vesting and transfer of property.

54. 1. Until a trustee is appointed the official receiver shall be the trustee for the purposes of this Act, and immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.
2. On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.
3. The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.
4. The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be

deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Disclaimer of onerous property.

55. 1. Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within three months¹⁾ after the first appointment of a trustee, disclaim the property. Provided that where any such property shall not have come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within two months¹⁾ after he first became aware thereof.
2. The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.
3. A trustee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by general rules, and the Court may, before or on granting such leave, require such notices to be given to person interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy as the Court thinks just.
4. The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.
5. The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.
6. The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

Provided always, that where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as underlessee or as mortgagee by

¹⁾ As to the time see now s. 19 of the Bankruptcy Act 1890.

demise except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

7. Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Powers of trustee to deal with property.

56. Subject to the provisions of this Act, the trustee may do all or any of the following things:

1. Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels.
2. Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.
3. Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.
4. Exercise any powers the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.
5. Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it; and sections fifty-six to seventy-three (both inclusive) of the Act of the session of the third and fourth years of the reign of King William the Fourth (chapter seventy-four), "for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance", shall extend and apply to proceedings under this Act, as if those sections were here re-enacted and made applicable in terms to those proceedings.

Powers exercisable by trustee with permission of committee of inspection.

57. The trustee may, with the permission of the committee of inspection, do all or any of the following things:

1. Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same.
2. Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt.
3. Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection.
4. Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit.
5. Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.
6. Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on.
7. Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

8. Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person.
9. Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Distribution of Property.

Declaration and distribution of dividends.

58. 1. Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.
2. The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.
 3. Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.
 4. Before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.
 5. When the trustee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Joint and separate dividends.

59. 1. Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.
2. Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Provision for creditors residing at a distance, &c.

60. In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed and also for debts provable in bankruptcy, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Right of creditor who has not proved debt before declaration of a dividend.

61. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or

dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend.

62. When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

No action for dividend.

63. No action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Power to allow bankrupt to manage property.

64. 1. The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

Allowance to bankrupt for maintenance or service.

2. The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

Right of bankrupt to surplus.

65. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

Part IV. Official Receivers and Staff of Board of Trade.

Appointment by Board of Trade of official receivers of debtors' estates.

66. 1. The Board of Trade may, at any time after the passing of this Act, and from time to time, appoint such persons as they think fit to be official receivers of debtors' estates, and may remove any person so appointed from such office. The official receivers of debtors' estates shall act under the general authority and directions of the Board of Trade, but shall also be officers of the courts to which they are respectively attached.

2. The number of official receivers so to be appointed, and the districts to be assigned to them, shall be fixed by the Board of Trade, with the concurrence of the Treasury. One person only shall be appointed for each district unless the Board of Trade, with the concurrence of the Treasury, shall otherwise direct; but the same person may, with the like concurrence, be appointed to act for more than one district.

3. Where more than one official receiver is attached to the Court, such one of them as is for the time being appointed by the Court for any particular estate shall be the official receiver for the purposes of that estate. The Court shall distribute the receiverships of the particular estates among the official receivers in the prescribed manner.

Deputy for official receiver.

- 67.** 1. The Board of Trade may from time to time, by order direct that any of its officers mentioned in the order shall be capable of discharging the duties of any official receiver during any temporary vacancy in the office, or during the temporary absence of any official receiver through illness or otherwise.
2. The Board of Trade may, on the application of an official receiver, at any time by order nominate some fit person to be his deputy, and to act for him for such time not exceeding two months as the order may fix, and under such conditions as to remuneration and otherwise as may be prescribed.

Status of official receiver.

- 68.** 1. The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.
2. An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.
3. All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.
4. The trustee shall supply the official receiver with such information, and give him such access to, and facilities for inspecting the bankrupt's books and documents and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

Duties of official receiver as regards the debtor's conduct.

69. As regards the debtor, it shall be the duty of the official receiver:

1. To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanor under the Debtors Act, 1869, or any amendment thereof, or under this Act, or which would justify the Court in refusing, suspending or qualifying an order for his discharge.
2. To make such other reports concerning the conduct of the debtor as the Board of Trade may direct.
3. To take such part as may be directed by the Board of Trade in the public examination of the debtor.
4. To take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct.

Duties of official receiver as to debtor's estate.

- 70.** 1. As regards the estate of a debtor it shall be the duty of the official receiver:
- a) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;
 - b) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;
 - c) To summon and preside at the first meeting of creditors;
 - d) To issue forms of proxy for use at the meetings of creditors;
 - e) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
 - f) To advertise the receiving order, the date of the creditors first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;
 - g) To act as trustee during any vacancy in the office of trustee.
2. For the purpose of his duties as interim receiver or manager the official receiver shall have the same powers as if he were a receiver and manager appointed by the High Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Board of Trade otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods.

Provided that when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

3. Every official receiver shall account to the Board of Trade and pay over all moneys and deal with all securities in such manner as the Board from time to time direct.

Power for Board of Trade to appoint officers.

71. The Board of Trade may, at any time after the passing of this Act, and from time to time, with the approval of the Treasury, appoint such additional officers, including official receivers, clerks, and servants (if any) as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

Part V. Trustees in Bankruptcy.

Remuneration of Trustee.

Remuneration of trustee.

72. 1. Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors or if the creditors so resolve by the Committee of Inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.
2. If one fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Board of Trade that the remuneration is unnecessarily large, the Board of Trade shall fix the amount of the remuneration.
3. The resolution shall express what expenses the remuneration is to cover and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.
4. (*For this subsection section 15 [2] of the Bankruptcy Act 1890 is substituted.*)
5. A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

Costs.

Allowance and taxation of costs.

73. 1. Where a trustee or manager receives remuneration for his services as such no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.
2. Where the trustee is a solicitor he may contract that the remuneration for his services as trustee shall include all professional services.
3. All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing master shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.
4. Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and if he fails

to do so within seven days after receipt of the request, or such further time as the Court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Receipts, Payments, Accounts, Audit.

Payment of money into Bank of England.

74. 1. An account called the Bankruptcy Estates Account shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.
2. (*This subsection is repealed by the Statute Law Revision Act 1898.*)
3. Every trustee in bankruptcy shall, in such manner and at such times as the Board of Trade with the concurrence of the Treasury direct, pay the money received by him to the Bankruptcy Estates Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.
4. Provided that if it appears to the committee of inspection that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Board of Trade that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the Board of Trade shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select.

Such account shall be opened and kept by the trustee in the name of the debtor's estate; and any interest receivable in respect of the account shall be part of the assets of the estate. The trustee shall make his payments into and out of such local bank in the prescribed manner.

5. Subject to any general rules relating to small bankruptcies under Part VII. of this Act, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Board of Trade, for the safety of the account, or other sufficient cause, order the withdrawal of the account.
6. If a trustee at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office by the Board of Trade, and shall be liable to pay any expenses occasioned by reason of his default.
7. All payments out of money standing to the credit of the Board of Trade in the Bankruptcy Estates Account shall be made by the Bank of England in the prescribed manner.

Trustee not to pay into private account.

75. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Investment of surplus funds.

76. 1. Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of bankrupts' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof as the Treasury may require to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

2. Whenever any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of bankrupts' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Bankruptcy Estates Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.
3. The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

Certain receipts and fees to be applied in aid of expenditure.

77. The Treasury may from time to time issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising from fees, fee stamps, and dividends on investments under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act.

Audit of trustee's accounts.

78. 1. Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such trustee.
2. The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.
3. The Board of Trade shall cause the accounts so sent to be audited, and for the purposes of the audit the trustee shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the trustee.
4. When any such account has been audited one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

The trustee to furnish list of creditors.

79. The trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Books to be kept by trustee.

80. The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect any such books.

Annual statement of proceedings.

81. 1. Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Board of Trade a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.
2. The Board of Trade shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Release of Trustee.

Release of trustee.

82. 1. When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting

- the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.
2. Where the release of a trustee is withheld the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.
 3. An order of the Board releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
 4. Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee.

Official Name.

Official name of trustee.

83. The trustee may sue and be sued by the official name of "the trustee of the property of a bankrupt", inserting the name of the bankrupt, and by that name may in any part of the British dominions or elsewhere hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Appointment and Removal.

Power to appoint joint or successive trustees.

84. 1. The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee", and shall be joint-tenants of the property of the bankrupt.
2. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Board of Trade.

Office of trustee vacated by insolvency.

85. If a receiving order is made against a trustee he shall thereby vacate his office of trustee.

Removal of trustee.

86. 1. The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as herein-after provided in case of a vacancy in the office of trustee.
2. If the Board of Trade are of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, the Board may remove him from his office, but if the creditors, by ordinary resolution, disapprove of his removal, he or they may appeal against it to the High Court.

Proceedings in case of vacancy in office of trustee.

87. 1. If a vacancy occurs in the office of a trustee the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

2. The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.
3. If the creditors do not within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official receiver shall report the matter to the Board of Trade, and the Board may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.
4. During any vacancy in the office of trustee the official receiver shall act as trustee.

Voting powers of Trustee.

Limitation of voting powers of trustee.

88. The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Control over Trustee.

Discretionary powers of trustee and control thereof.

89. 1. Subject to the provisions of this Act the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.
2. The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, or whenever requested in writing to do so by one fourth in value of the creditors.
3. The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.
4. Subject to the provisions of this Act the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court against trustee.

90. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board of Trade over trustees.

91. 1. The Board of Trade shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor in regard thereto, the Board shall inquire into the matter and take such action thereon as may be deemed expedient.
2. The Board may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy in which the trustee is engaged, and may, if the Board think fit, apply to the Court to examine on oath the trustee or any other person concerning the bankruptcy.
3. The Board may also direct a local investigation to be made of the books and vouchers of the trustee.

Part VI. Constitution, Procedure and Powers of Court.

Jurisdiction.

Jurisdiction to be exercised by High Court and county courts.

92. 1. The Courts having jurisdiction in bankruptcy shall be the High Court and the county courts.

2. But the Lord Chancellor may from time to time, by order under his hand, exclude any county court from having jurisdiction in bankruptcy, and for the purposes of bankruptcy jurisdiction may attach its district or any part thereof to the High Court, or to any other county court or courts, and may from time to time revoke or vary any order so made. The Lord Chancellor may, in like manner and subject to the like conditions, detach the district of any county court or any part thereof from the district and jurisdiction of the High Court.
3. The term "district", when used in this Act with reference to a county court, means the district of the court for the purposes of bankruptcy jurisdiction.
4. A county court which, at the commencement of this Act, is excluded from having bankruptcy jurisdiction, shall continue to be so excluded until the Lord Chancellor otherwise orders.
5. Periodical sittings for the transaction of bankruptcy business by county courts having jurisdiction in bankruptcy shall be holden at such times and at such intervals as the Lord Chancellor shall prescribe for each such court.

Consolidation of London Bankruptcy Court with Supreme Court of Judicature.

93. 1. From and after the commencement of this Act the London Bankruptcy Court shall be united and consolidated with and form part of the Supreme Court of Judicature, and the jurisdiction of the London Bankruptcy Court shall be transferred to the High Court.
2. For the purposes of this union, consolidation, and transfer, and of all matters incidental thereto and consequential thereon, the Supreme Court of Judicature Act, 1873, as amended by subsequent Acts, shall, subject to the provisions of this Act, have effect as if the union, consolidation, and transfer had been effected by that Act, except that all expressions referring to the time appointed for the commencement of that Act shall be construed as referring to the commencement of this Act, and, subject as aforesaid, this Act and the said above-mentioned Acts shall be read and construed together.

Transaction of bankruptcy business by special judge of High Court.

94. 1. Subject to general rules, and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and Acts amending it:
 - a) All matters pending in the London Bankruptcy Court at the commencement of this Act; and
 - b) All matters which would have been within the exclusive jurisdiction of the London Bankruptcy Court, if this Act had not passed; and
 - c) All matters in respect of which jurisdiction is given to the High Court by this Act, shall be assigned to such Division of the High Court as the Lord Chancellor may from time to time direct.
2. All such matters shall, subject as aforesaid, be ordinarily transacted and disposed of by or under the direction of one of the judges of the High Court, and the Lord Chancellor shall from time to time assign a judge for that purpose.
3. Provided that during vacation, or during the illness of the judge so assigned, or during his absence or for any other reasonable cause such matters, or any part thereof, may be transacted and disposed of by or under the directions of any judge of the High Court named for that purpose by the Lord Chancellor.
4. Subject to the provisions of this Act, the officers, clerks, and subordinate persons who are, at the commencement of this Act, attached to the London Bankruptcy Court, and their successors, shall be officers of the Supreme Court of Judicature, and shall be attached to the High Court.
5. Subject to general rules, all bankruptcy matters shall be entitled, "In bankruptcy".

Petition, where to be presented.

95. 1. If the debtor against or by whom a bankruptcy petition is presented has resided or carried on business within the London bankruptcy district as defined by this Act for the greater part of the six months immediately

preceding the presentation of the petition, or for a longer period during those six months than in the district of any court, or is not resident in England, or if the petitioning creditor is unable to ascertain the residence of the debtor, the petition shall be presented to the High Court.

2. In any other case the petition shall be presented to the county court for the district in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition.
3. Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

Definition of the London Bankruptcy District.

96. The London Bankruptcy District shall, for the purposes of this Act, comprise the city of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any county court described as a metropolitan county court in the list contained in the Third Schedule.

Transfer of proceedings from court to court.

97. 1. Subject to the provisions of this Act, every court having original jurisdiction in bankruptcy shall have jurisdiction throughout England.
2. Any proceedings in bankruptcy may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by any prescribed authority and in the prescribed manner from one court to another court, or may by the like authority be retained in the court in which the proceedings were commenced, although it may not be the court in which the proceedings ought to have been commenced.
3. If any question of law arises in any bankruptcy proceeding in a county court which all the parties to the proceeding desire, or which one of them and the judge of the county court may desire, to have determined in the first instance in the High Court, the judge shall state the facts, in the form of a special case, for the opinion of the High Court. The special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Exercise in chambers of High Court jurisdiction.

98. Subject to the provisions of this Act and to general rules the judge of the High Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction.

Jurisdiction in bankruptcy of registrar.

99. 1. The registrars in bankruptcy of the High Court, and the registrars of a county court having jurisdiction in bankruptcy, shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such registrars in the exercise of the said powers and jurisdiction shall be deemed the order or act of the Court.
2. Subject to general rules limiting the powers conferred by this section, a registrar shall have power:
 - a) To hear bankruptcy petitions, and to make receiving orders and adjudications thereon;
 - b) To hold the public examination of debtors;
 - c) To grant orders of discharge where the application is not opposed;
 - d) To approve compositions or schemes of arrangement when they are not opposed;
 - e) To make interim orders in any case of urgency;
 - f) To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers;
 - g) To hear and determine any unopposed or ex parte application;
 - h) To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property.
3. The registrars in bankruptcy of the High Court shall also have power to grant orders of discharge and certificates of removal of disqualifications, and to approve compositions and schemes of arrangement.

4. A registrar shall not have power to commit for contempt of court.
5. The Lord Chancellor may from time to time by order direct that any specified registrar of a county court shall have and exercise all the powers of a bankruptcy registrar of the High Court.

Powers of county court.

100. A county court shall, for the purposes of its bankruptcy jurisdiction, in addition to the ordinary powers of the Court, have all the powers and jurisdiction of the High Court, and the orders of the Court may be enforced accordingly in manner prescribed.

Board of Trade to make payments in accordance with directions of Court.

101. Where any moneys or funds have been received by an official receiver or by the Board of Trade, and the Court makes an order declaring that any person is entitled to such moneys or funds the Board of Trade shall make an order for the payment thereof to the person so entitled as aforesaid.

General powers of bankruptcy courts.

102. 1. Subject to the provisions of this Act, every court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

Provided that the jurisdiction hereby given shall not be exercised by the county court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the judge exceed in value two hundred pounds.

2. A court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other court, nor shall any appeal lie from its decisions, except in manner directed by this Act.
3. If in any proceeding in bankruptcy there arises any question of fact which either of the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may if it thinks fit direct the trial to be had with a jury and the trial may be had accordingly, in the High Court in the same manner as if it were the trial of an issue of fact in an action, and in the county court in the manner in which jury trials in ordinary cases are by law held in that court.
4. Where a receiving order has been made in the High Court under this Act, the judge by whom such order was made shall have power, if he sees fit, without any further consent, to order the transfer to such judge of any action pending in any other division, brought or continued by or against the bankrupt.
5. Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Board of Trade or by an official receiver or any other officer of the Board of Trade under any power conferred by this Act, the court may, on the application of the Board of Trade or an official receiver or other duly authorised person order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the court may also, if it shall think fit, upon any such application make an immediate order for the committal of such defaulting trustee, debtor, or other person: provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Judgment Debtors.

Judgment debtor's summons to be bankruptcy business.

103. 1. It shall be lawful for the Lord Chancellor by order to direct that the jurisdiction and powers under section five of the Debtors Act, 1869, now vested

in the High Court, shall be assigned to and exercised by the judge to whom bankruptcy business is assigned.

2. It shall be lawful also for the Lord Chancellor in like manner to direct that the whole or any part of the said jurisdiction and powers shall be delegated to and exercised by the bankruptcy registrars of the High Court.
3. Any order made under this section may, at any time, in like manner, be rescinded or varied.
4. Every county court within the jurisdiction of which a judgment debtor is or resides shall have jurisdiction under section five of the Debtors Act, 1869, although the amount of the judgment debt may exceed fifty pounds.
5. Where, under section five of the Debtors Act, 1869, application is made by a judgment creditor to a court, having bankruptcy jurisdiction, for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made.
6. General rules under this Act may be made for the purpose of carrying into effect the provisions of the Debtors Act, 1869.

Appeals.

Appeals in bankruptcy.

104. 1. Every court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it under its bankruptcy jurisdiction.
2. Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows:
 - a) *This subsection is repealed by the Bankruptcy Appeals (County Courts) Act 1884 and section 2 of that Act is substituted therefor, which provides as follows:* "Section one hundred and four, subsection 2 (a) of the Bankruptcy Act 1883 is hereby repealed and instead thereof it is hereby enacted that an appeal shall lie in bankruptcy matters, at the instance of any person aggrieved, from the order of a County Court to a Divisional Court of the High Court of Justice, of which the Judge to whom bankruptcy business shall for the time being be assigned shall for the purpose of hearing any such appeal shall be a member. The decision of such Divisional Court upon any such appeal shall be final and conclusive, unless in any case it shall seem fit to the said Divisional Court or to the Court of Appeal to give special leave to appeal therefrom to her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive";
 - b) An appeal shall lie from the order of the High Court to Her Majesty's Court of Appeal;
 - c) An appeal shall, with the leave of Her Majesty's Court of Appeal, but not otherwise, lie from the order of that Court to the House of Lords;
 - d) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

Procedure.

Discretionary powers of the Court.

105. 1. Subject to the provisions of this Act and to general rules, the costs of and incidental to any proceeding in Court under this Act shall be in the discretion of the Court: Provided that where any issue is tried by a jury the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the judge before whom such issue is tried shall otherwise order.
2. The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.
3. The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.
4. Where by this Act or by general rules, the time for doing any Act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

5. Subject to general rules, the Court may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or by commission abroad.
6. For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

Consolidation of petitions.

106. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

Power to change carriage of proceedings.

107. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor.

Continuance of proceedings on death of debtor.

108. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Power to stay proceedings.

109. The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

Power to present petition against one partner.

110. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Power to dismiss petition against some respondents only.

111. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Property of partners to be vested in same trustee.

112. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, any other bankruptcy petition against or by a member of the same partnership shall be filed in or transferred to the Court in which the first mentioned petition is in course of prosecution, and, unless the Court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first mentioned member of the partnership, and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Actions by trustee and bankrupt's partners.

113. Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

Actions on joint contracts.

114. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

Proceedings in partnership name.

115. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Officers.**Disabilities of officers.**

116. 1. No registrar or other officer attached to any court having jurisdiction in bankruptcy shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons.

2. No registrar or official receiver or other officer attached to any such court shall, during his continuance in office, either directly or indirectly, by himself, his clerk, or partner, act as solicitor in any proceeding in bankruptcy or in any prosecution of a debtor by order of the Court, and if he does so act he shall be liable to be dismissed from office.

Provided that nothing in this section shall affect the right of any registrar or officer appointed before the passing of this Act to act as solicitor by himself, his clerk, or partner to the extent permitted by section sixty-nine of the Bankruptcy Act, 1869.

Orders and Warrants of Court.**Enforcement of orders of courts throughout the United Kingdom.**

117. Any order made by a court having jurisdiction in bankruptcy in England under this Act shall be enforced in Scotland and Ireland in the courts having jurisdiction in bankruptcy in those parts of the United Kingdom respectively, in the same manner in all respects as if the order had been made by the Court hereby required to enforce it; and in like manner any order made by a court having jurisdiction in bankruptcy in Scotland shall be enforced in England and Ireland, and any order made by a court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the courts respectively having jurisdiction in bankruptcy in the part of the United Kingdom where the orders may require to be enforced, and in the same manner in all respects as if the order had been made by the Court required to enforce it in a case of bankruptcy within its own jurisdiction.

Courts to be auxiliary to each other.

118. The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

Warrants of Bankruptcy Courts.

119. 1. Any warrant of a court having jurisdiction in bankruptcy in England may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in Her Majesty's dominions, in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England may be executed in those parts of Her Majesty's dominions respectively in pursuance of the Acts of Parliament in that behalf.

2. A search warrant issued by a court having jurisdiction in bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

Commitment to prison.

120. Where the Court commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a fine not exceeding one hundred pounds.

Part VII. Small Bankruptcies.**Summary administration in small cases.**

121. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed in value three hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:

1. If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy.
2. There shall be no committee of inspection, but the official receiver may do with the permission of the Board of Trade all things which may be done by the trustee with the permission of the committee of inspection.
3. Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

Provided that the creditors at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

Power for county court to make administration order instead of order for payment by instalments.

122. 1. Where a judgment has been obtained in a county court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the county court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the county court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the court may think just.
2. The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the county court may, if it thinks fit, set aside the order.
 3. Where, in the opinion of the county court in which the judgment is obtained, it would be inconvenient that that court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the county court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter county court shall have all the powers which it would have under this section, had the judgment been obtained in it.
 4. Where it appears to the registrar of the county court that property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure.
 5. When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a county court, except with the leave of that county court, and on such terms as that court may impose; and any county court or inferior court in which proceedings are pending against the debtor in respect of any such

debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

6. If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same.
7. The order shall be carried into effect in such manner as may be prescribed by general rules.
8. Money paid into court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts) and then in liquidation of debts in accordance with the order.
9. Notice of the order shall be sent to the registrar of county court judgments, and be posted in the office of the county court of the district in which the debtor resides, and sent to every creditor notified by the debtor, or who has proved.
10. Any creditor of the debtor, on proof of his debt before the registrar, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.
11. Any creditor may in the prescribed manner object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.
12. Any person who after the date of the order becomes a creditor of the debtor, shall, on proof of his debt before the registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.
13. When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.
14. In computing the salary of a registrar under the County Courts Act every creditor scheduled, not being a judgment creditor, shall count as a plaintiff.

Part VIII. Supplemental Provisions.

Application of Act.

Exclusion of partnerships and companies.

123. A receiving order shall not be made against any corporation, or against any partnership or association, or company registered under the Companies Act, 1862.

Privilege of Parliament.

124. If a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege.

Administration in bankruptcy of estate of person dying insolvent.

125. 1. Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the Law of Bankruptcy.
2. Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition with or without costs.
3. (*This subsection is repealed by s. 21 of the Bankruptcy Act 1890.*)

4. A petition for administration under this section shall not be presented to the court after proceedings have been commenced in any court of justice for the administration of the deceased debtor's estate, but that court may on proof that the estate is insufficient to pay its debts, transfer the proceedings to the court exercising jurisdiction in bankruptcy, and thereupon such last-mentioned court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.
5. Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver of the court, as trustee thereof, and he shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act.
6. With the modifications herein-after mentioned, all the provisions of Part III. of this Act, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.
7. In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.
8. If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.
9. Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.
10. Unless the context otherwise requires, "court", in this section, means the court within the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; "creditor" means one or more creditors qualified to present a bankruptcy petition, as in this Act provided.
11. General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy.

Saving as to debts contracted before Act of 1861.

126. No person, not being a trader within the meaning of the Bankruptcy Act, 1861, shall be adjudged bankrupt in respect of a debt contracted before the passing of that Act.

General Rules.

Power to make general rules.

- 127. 1.** The Lord Chancellor may from time to time, with the concurrence of the President of the Board of Trade, make, revoke, and alter general rules for carrying into effect the objects of this Act.
- 2.** All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

3. (*Subsection 3 is repealed by 61 & 62 Vict. c. 22.*)
4. Provided always, that the said general rules, so made, revoked, or altered, shall not extend the jurisdiction of the court.
5. After the commencement of this Act no general rule under the provisions of this section shall come into operation until the expiration of one month after the same has been made and issued.

Fees, Salaries, Expenditure, and Returns.

Fees and remuneration.

128. 1. The Lord Chancellor may, with the sanction of the Treasury, from time to time prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act; and the Treasury shall direct by whom and in what manner the same are to be collected, accounted for, and to what account they shall be paid. The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may from time to time vary, increase, or diminish such remuneration as they may see fit.
2. (*This subsection is repealed by 61 & 62 c. 22.*)

Judicial salaries, &c.

129. 1. The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may from time to time vary, increase, or diminish such remuneration as he may think fit.
2. (*This subsection is repealed by 61 & 62 Vict. c. 22.*)

Annual accounts of receipts and expenditure in respect of bankruptcy proceedings.

130. 1. The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of bankruptcy proceedings, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.
2. The accounts of the Board of Trade, under this Act, shall be audited in such manner as the Treasury from time to time direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns, and give such information as the Treasury may from time to time direct.

Returns by bankruptcy officers.

131. The registrars and other officers of the courts acting in bankruptcy shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act, to be prepared and laid before both Houses of Parliament.

Evidence.

Gazette to be evidence.

132. 1. A copy of the London Gazette containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice.
2. The production of a copy of the London Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Evidence of proceedings at meetings of creditors.

133. 1. A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.
2. Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Evidence of proceedings in bankruptcy.

134. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Act, shall, if it appears to be sealed with the seal of any Court having jurisdiction in bankruptcy, or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

Swearing of affidavits.

135. Subject to general rules, any affidavit to be used in a bankruptcy court may be sworn before any person authorised to administer oaths in the High Court, or in the Court of Chancery of the county palatine of Lancaster, or before any registrar of a bankruptcy court, or before any officer of a bankruptcy court authorised in writing on that behalf by the judge of the Court, or, in the case of a person residing in Scotland or in Ireland, before a judge ordinary, magistrate, or justice of the peace, or, in the case of a person who is out of the Kingdom of Great Britain and Ireland, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid by a British minister or British consul, or by a notary public).

Death of witness.

136. In case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Bankruptcy Courts to have seals.

137. Every Court having jurisdiction in bankruptcy under this Act shall have a seal describing the Court in such manner as may be directed by order of the Lord Chancellor, and judicial notice shall be taken of the seal, and of the signature of the judge or registrar of any such Court, in all legal proceedings.

Certificate of appointment of trustee.

138. A certificate of the Board of Trade that a person has been appointed trustee under this Act, shall be conclusive evidence of his appointment.

Appeal from Board of Trade to High Court.

139. Where by this Act an appeal to the High Court is given against any decision of the Board of Trade, or of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

Proceedings of Board of Trade.

140. 1. All documents purporting to be orders or certificates made or issued by the Board of Trade, and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence, and deemed to be such orders or certificates without further proof unless the contrary is shown.

2. A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade shall be conclusive evidence of the fact so certified.

Time.

Computation of time.

141. 1. Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter Week, or a day appointed for public fast, humiliation, or thanksgiving, or a day on which the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.
2. Where by this Act any act or proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

Notices.

Service of notices.

142. All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith.

Formal Defects.

Formal defect not to invalidate proceedings.

143. 1. No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court.
2. No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

Stamp Duty.

Exemption of deeds, &c. from stamp duty.

144. Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act.

Executions.

Sales under executions to be public.

145. Where the sheriff sells the goods of a debtor under an execution for a sum exceeding twenty pounds (including legal incidental expenses), the sale shall, unless the court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on and during three days next preceding the day of sale.

Writ of elegit not to extend to goods.

146. 1. The sheriff shall not under a writ of elegit deliver the goods of a debtor nor shall a writ of elegit extend to goods.
 2. (*This sub-section repealed by the Statute Law Revision Act 1898.*)

Bankrupt Trustee.

Application of Trustee Act to bankruptcy of trustee.

147. (*This section is repealed by ss. 25 & 51 of the Trustee Act 1893.*)

Corporations, &c.

Acting of corporations, partners, &c.

148. For all or any of the purposes of this Act a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or curator bonis.

Construction of former Acts, &c.

Construction of Acts mentioning commission of bankruptcy, &c.

149. 1. Where in any Act of Parliament, instrument, or proceeding passed, executed, or taken before the commencement of this Act mention is made of a commission of bankruptcy or fiat in bankruptcy, the same shall be construed, with reference to the proceedings under a bankruptcy petition, as if a commission of or a fiat in bankruptcy had been actually issued at the time of the presentation of such petition.
 2. Where by any Act or instrument, reference is made to the Bankruptcy Act, 1869, the Act or instrument shall be construed and have effect as if reference were made therein to the corresponding provisions of this Act.

Certain provisions to bind the Crown.

150. Save as herein provided the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

Saving for existing rights of audience.

151. Nothing in this Act, or in any transfer of jurisdiction effected thereby shall take away or affect any right of audience that any person may have had at the commencement of this Act, and all solicitors or other persons who had the right of audience before the Chief Judge in Bankruptcy shall have the like right of audience in bankruptcy matters in the High Court.

Married women.

152. Nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882.

Transitory Provisions.

Comptroller of bankruptcy, &c. and their staff.

153. 1. The existing comptroller in bankruptcy and his officers, clerks and servants shall not be attached to the Supreme Court, but shall in all respects act under the directions of the Board of Trade.
 2. The existing official assignee, provisional and official assignee of the estates and effects of insolvent debtors, and receiver of the Insolvent Debtors' Court, together with his staff, the official solicitors and the messenger in bankruptcy, together with his staff, and the accountant in bankruptcy and his staff, and also such other officers and clerks of the London Bankruptcy Court as the Lord Chancellor, with the concurrence of the Board of Trade, may at any time select, shall be transferred to and become officers of the Board of Trade: provided that the Board of Trade, with the concurrence of the Lord Chancellor, may at any time transfer any such officer or clerk from the Board of Trade to the Supreme Court.
 3. Subject to the provisions of this Act they shall hold their offices by the same tenure and on the same terms and conditions, and be entitled to the

same right in respect of salary and pension as heretofore, and their duties shall, except so far as altered with their own consent, be such as in the opinion of the Board of Trade are analogous to those performed by them at the commencement of this Act.

4. On the occurrence, at any time after the passing of this Act, of any vacancy in the office of any of the said persons the Board of Trade may, with the approval of the Treasury, make such arrangement as they think fit, either for the abolition of the office, or for its continuance under modified conditions, and may appoint a fit person to perform the remaining duties thereof, and the person so appointed shall have all the powers and authorities of the person who is at the passing of this Act the holder of such office; and all estates, rights, and effects vested at the time of the vacancy in any such officer shall by virtue of such appointment become vested in the person so appointed, and the like appointment on a vacancy shall be made, and the like vesting shall have effect from time to time as occasion requires: Provided that any person so appointed shall be an officer of the Board of Trade, and shall in all respects act under the directions of the Board of Trade.
5. The Board of Trade may, with the approval of the Lord Chancellor, from time to time direct that any duties or functions, not of a judicial character, relating to any bankruptcies, insolvencies, or other proceedings under any Act prior to the Bankruptcy Act, 1869, which were, at the time of the passing of this Act, performed or exercised by registrars of county courts, shall devolve on and be performed by the official receiver, and thereupon all powers and authorities of the registrar, and all estates, rights, and effects vested in the registrar shall become vested in the official receiver.

Power to abolish existing offices.

154. 1. If the Lord Chancellor is of opinion that any office attached to the London Bankruptcy Court at the passing of this Act is unnecessary, he may, with the concurrence of the Treasury, at any time after the passing of this Act, abolish the office.
2. The Treasury may, on the petition of any person whose office or employment is abolished by or under this Act, on the commencement of this Act or on any other event, inquire whether any, and if any, what compensation ought to be made to the petitioner, regard being had to the conditions on which his appointment was made, the nature of his office or employment, and the duration of his service; and if they think that his claim to compensation is established, may award to him, out of moneys to be provided by Parliament, such compensation, by annuity or otherwise, as under the circumstances of the case they think just and reasonable.
3. The Board of Trade may, under the like conditions and on the like terms, abolish any of the offices in the last preceding section mentioned.

Performance of new duties by persons whose offices are abolished.

155. 1. The Lord Chancellor or Board of Trade may, at any time after the passing of this Act appoint any person whose office is abolished under this Act to some other office under this Act, the duties of which he is, in the opinion of the Lord Chancellor or Board, competent to perform. Provided that the person so appointed shall during his tenure of the new office receive an amount of annual remuneration which, together with the compensation for the loss of the abolished office, is not less than the emoluments of the abolished office.
2. When, after the commencement of this Act, any officer is continued in the performance of any duties relating to bankruptcy or insolvency, under any previous Act, the Lord Chancellor, or, as the case may be, the Board of Trade may order that such officer may, in addition to such duties, perform any analogous duties under this Act, without being entitled to receive any additional remuneration.

Selection of persons from holders of abolished offices.

156. Every person appointed to any office or employment under this Act shall in the first instance be selected from the persons (if any) whose office or

employment is abolished under this Act, unless in the opinion of the Lord Chancellor, or in the case of persons to be appointed by the Board of Trade, of that Board, none of such persons are fit for such office or employment: Provided that the person so appointed or employed shall during his tenure of the new office be entitled to receive an amount of remuneration which, together with the compensation (if any) for loss of the abolished office, shall be not less than the emolument of the abolished office.

Acceptance of public employment by annuitants.

157. If any person to whom a compensation annuity is granted under this Act accepts any public employment, he shall, during the continuance of that employment, receive only so much (if any) of that annuity as, with the remuneration of that employment, will amount to a sum not exceeding the salary or emoluments in respect of the loss whereof the annuity was awarded, and if the remuneration of that employment is equal to or greater than such salary or emoluments the annuity shall be suspended so long as he receives that remuneration.

Superannuation of registrars, &c.

158. The registrars, clerks, and other persons holding their offices at the passing of this Act who may be continued in their offices, shall, on their retirement therefrom, be allowed such superannuation as they would have been entitled to receive if this Act had not been passed, and they had continued in their offices under the existing Acts.

Transfer of estates on vacancy of office of trustee in liquidation under the Bankruptcy Act, 1869.

159. In every liquidation by arrangement under the Bankruptcy Act, 1869, pending at the commencement of this Act, if at any time after the commencement of this Act there is no trustee acting in the liquidation by reason of death, or for any other cause, such of the official receivers of bankrupts' estates as is appointed by the Board of Trade for that purpose shall become and be the trustee in the liquidation, and the property of the liquidating debtor shall pass to and vest in him accordingly; but this provision shall not prejudice the right of the creditors in the liquidation to appoint a new trustee, in manner directed by the Bankruptcy Act, 1869, or the rules thereunder; and on such appointment the property of the liquidating debtor shall pass to and vest in the new trustee.

The provisions of this Act with respect to the duties and responsibilities of and accounting by a trustee in a bankruptcy under this Act shall apply, as nearly as may be, to a trustee acting under the provisions of this section.

Transfer of outstanding property on close of bankruptcy or liquidation.

160. Where a bankruptcy or liquidation by arrangement under the Bankruptcy Act, 1869, has been or is hereafter closed, any property of the bankrupt or liquidating debtor which vested in the trustee and has not been realised or distributed shall vest in such person as may be appointed by the Board of Trade for that purpose, and he shall thereupon proceed to get in, realise, and distribute the property in like manner and with and subject to the like powers and obligations as far as applicable, as if the bankruptcy or liquidation were continuing, and he were acting as trustee thereunder.

Transfer of estates from registrars of London Court to official receiver.

161. In every bankruptcy under the Bankruptcy Act, 1869, pending at the commencement of this Act, where a registrar of the London Bankruptcy Court or of any county court is or would hereafter but for this enactment become the trustee under the bankruptcy, such of the official receivers of bankrupts' estates as may be appointed by the Board of Trade for that purpose shall from and after the commencement of this Act be the trustee in the place of the registrar, and the property of the bankrupt shall pass to and vest in the official receiver accordingly.

Unclaimed Funds or Dividends.

Unclaimed and undistributed dividends or funds under this and former Acts.

162. 1. Where the trustee, under any bankruptcy, composition or scheme pursuant to this Act, shall have under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making

a final dividend, such trustee shall have in his hands or under his control any unclaimed or undistributed moneys arising from the property of the debtor, he shall forthwith pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

2. a) Where, after the passing of this Act, any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under any Act of Parliament mentioned in the Fourth Schedule, or any petition, resolution, deed, or other proceeding under or in pursuance of any such Act, have remained or remain unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish such trustee or other person with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof;
- b) The Board of Trade may at any time order any such trustee or other person to submit to them an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed, or other proceeding as aforesaid, and may direct and enforce an audit of the account;
- e) The Board of Trade, with the concurrence of the Treasury, may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section any court having jurisdiction in bankruptcy shall have and at the instance of the person so appointed, or of the Board of Trade, may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of this Act with respect thereto shall, with any necessary modifications, apply to proceedings under this section.
3. The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.
4. Any person claiming to be entitled to any moneys paid in to the Bankruptcy Estates Account pursuant to this section may apply to the Board of Trade for payment to him of the same, and the Board of Trade, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

Any person dissatisfied with the decision of the Board of Trade in respect of his claim may appeal to the High Court.

5. (*This subsection is repealed by the Statute Law Revision Act 1898.*)

Punishment of Fraudulent Debtors.

Extension of penal provisions of 32 & 33 Vict. c. 62. to petitioning debtors, &c.

163. 1. Sections eleven and twelve of the Debtors Act, 1869, relating to the punishment of fraudulent debtors and imposing a penalty for absconding with property, shall have effect as if there were substituted therein for the words "if after the presentation of a bankruptcy petition against him", the words, "if after the presentation of a bankruptcy petition by or against him".
2. The provisions of the Debtors Act, 1869, as to offences by bankrupts shall apply to any person whether a trader or not in respect of whose estate a receiving order has been made as if the term "bankrupt" in that Act included a person in respect of whose estate a receiving order had been made.

Power for Court to order prosecution on report of official receiver.

164. Section sixteen of the Debtors Act, 1869, shall be construed and have effect as if the term "a trustee in any bankruptcy" included the official receiver of a bankrupt's estate, and shall apply to offences under this Act as well as to offences under the Debtors Act, 1869.

Power for Court to commit for trial.

- 165.** 1. Where there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by statute made a misdemeanor in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial.
2. For the purpose of committing the bankrupt or such other person for trial the Court shall have all the powers of a stipendiary magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise.

Nothing in this sub-section shall be construed as derogating from the powers or jurisdiction of the High Court.

Public Prosecutor to act in certain cases.

166. Where the Court orders the prosecution of any person for any offence under the Debtors Act, 1869, or Acts amending it, or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Director of Public Prosecutions to institute and carry on the prosecution.

Criminal liability after discharge or composition.

167. Where a debtor has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Interpretation.**Interpretation of terms.**

168. 1. In this Act, unless the context otherwise requires:

- "The Court" means the Court having jurisdiction in bankruptcy under this Act.
 - "Affidavit" includes statutory declarations, affirmations, and attestations on honour.
 - "Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made.
 - "Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy.
 - "Gazetted" means published in the London Gazette.
 - "General rules" include forms.
 - "Goods" includes all chattels personal.
 - "Local bank" means any bank in or in the neighbourhood of the bankruptcy district in which the proceedings are taken.
 - "Oath" includes affirmation, statutory declaration, and attestation on honour.
 - "Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution.
 - "Person" includes a body of persons corporate or unincorporate.
 - "Prescribed" means prescribed by general rules within the meaning of this Act.
 - "Property" includes money, goods, things in action, land, and every description of property, whether real or personal and whether situate in England or elsewhere; also, obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined.
 - "Resolution" means ordinary resolution.
 - "Secured creditor" means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor.
 - "Schedule" means schedule to this Act.
 - "Sheriff" includes any officer charged with the execution of a writ or other process.
 - "Special resolution" means a resolution decided by a majority in number and three fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution.
 - "Trustee" means the trustee in bankruptcy of a debtor's estate.
2. The schedules to this Act shall be construed and have effect as part of this Act.

Repeal.

Repeal of enactments.

- 169.** 1. (*This subsection is repealed by the Statute Law Revision Act 1898.*)
 2. (*This subsection is repealed by the Statute Law Revision Act 1898.*)
 3. Notwithstanding the repeal effected by this Act, the proceedings under any bankruptcy petition, liquidation by arrangement, or composition with creditors under the Bankruptcy Act, 1869, pending at the commencement of this Act shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue, and all the provisions of the Bankruptcy Act, 1869, shall, except as aforesaid, apply thereto, as if this Act had not passed.

Proceedings under 32 & 33 Vict. c. 71, ss. 125, 126.

170. After the passing of this Act no composition or liquidation by arrangement under sections 125 and 126 of the Bankruptcy Act, 1869, shall be entered into or allowed without the sanction of the court or registrar having jurisdiction in the matter; such sanction shall not be granted unless the composition or liquidation appears to the court or registrar to be reasonable and calculated to benefit the general body of creditors.

Schedules.

The First Schedule.

Meetings of Creditors.

- 1.** The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.
- 2.** The official receiver shall summon the meeting by giving not less than seven days notice of the time and place thereof in the London Gazette and in a local paper.
- 3.** The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.
- 4.** The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.
- 5.** The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court, or so requested in writing by one fourth in value of the creditors.
- 6.** Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.
- 7.** The official receiver, or some person nominated by him shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.
- 8.** A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.
- 9.** A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.
- 10.** For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.
- 11.** A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.
- 12.** It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting

at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. *This rule is repealed by s. 22 of the Bankruptcy Act 1890.*

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. *This rule is repealed by s. 22 (3) of the Bankruptcy Act 1890.*

19. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

21. A creditor may appoint the official receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

23. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

24. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

25. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor. Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

The Second Schedule.

Proof of Debts.

Proof of ordinary cases.

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.
8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by Secured Creditors.

9. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.
10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.
11. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.
12. a) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value; b) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase. c) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.
13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made bona fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.
14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.
15. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of Rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.
16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.
17. Subject to the provisions of Rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act.

Proof in respect of Distinct Contracts.

18. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

Periodical Payments.

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the order from the time when the debt or sum was payable, if the

debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt Payable at a Future Time.

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs.

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

The Third Schedule.

List of Metropolitan County Courts.

The Bloomsbury County Court of Middlesex.
 The Bow County Court of Middlesex.
 The Brompton County Court of Middlesex.
 The Clerkenwell County Court of Middlesex.
 The Lambeth County Court of Surrey.
 The Marylebone County Court of Middlesex.
 The Shoreditch County Court of Middlesex.
 The Southwark County Court of Surrey.
 The Westminster County Court of Middlesex.
 The Whitechapel County Court of Middlesex.

The Fourth Schedule.

Statutes relating to Unclaimed Dividends.

Session and Chapter.	Title of Act.
7 & 8 Viet. c. 70.	An Act for facilitating arrangements between debtors and creditors.
12 & 13 Viet. c. 106.	The Bankruptcy Law Consolidation Act, 1849.
24 & 25 Viet. c. 134.	The Bankruptcy Act, 1861.
32 & 33 Viet. c. 71.	The Bankruptcy Act, 1869.

The Fifth Schedule.

(Repealed, S. L. R. Act, 1898.)

The Merchandise Marks Act, 1887.

50 & 51 Vict.

Cap. XXVIII.

An Act to consolidate and amend the Law relating to Fraudulent Marks on Merchandise (23rd August 1887).

Short title.

1. This Act may be cited as the Merchandise Marks Act, 1887.

Offences as to trade marks and trade description.

2. 1. Every person who
 - a) Forges any trade mark; or
 - b) Falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or
 - c) Makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or
 - d) Applies any false trade description to goods; or
 - e) Disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or
 - f) Causes any of the things above in this section mentioned to be done, shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.
2. Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves
 - a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and
 - b) That on demand made by or on behalf of the the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or
 - c) That otherwise he had acted innocently;
 be guilty of an offence against this Act.
3. Every person guilty of an offence against this Act shall be liable
 - i) On conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and
 - ii) On summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and
 - iii) In any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.
4. The court before whom a person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.
5. If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.
6. Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone

into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

Definitions.

3. 1. For the purposes of this Act

The expression "trade mark" means a trade mark registered in the register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable:

The expression "trade description" means any description, statement, or other indication, direct or indirect,

- a) As to the number, quantity, measure, gauge, or weight of any goods, or
- b) As to the place or country in which any goods were made or produced, or
- c) As to the mode of manufacturing or producing any goods, or
- d) As to the material of which any goods are composed, or
- e) As to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act:

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act:

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise:

The expressions "person", "manufacturer, dealer, or trader", and "proprietor" include any body of persons corporate or unincorporate:

The expression "name" includes any abbreviation of a name.

- 2. The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.
- 3. The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which
 - a) Are not a trade mark or part of a trade mark, and
 - b) Are identical with, or a colourable imitation of the name or initials of a person carrying on business in connexion with goods of the same description, and not having authorised the use of such name or initials, and
 - c) Are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connexion with such goods.

Forging trade mark.

4. A person shall be deemed to forge a trade mark who either

- a) Without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

b) Falsifies any genuine trade mark, whether by alteration, addition, affacement, or otherwise;
and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Applying marks and descriptions.

5. 1. A person shall be deemed to apply a trade mark or mark or trade description to goods who
 - a) Applies it to the goods themselves; or
 - b) Applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or
 - c) Places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or
 - d) Uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or mark or trade description.
2. The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

3. A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

Exemption of certain persons employed in ordinary course of business.

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves

- a) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- b) That he took reasonable precautions against committing the offence charged; and
- c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Application of Act to watches.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country

in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *primâ facie* be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Mark on watch case.

8. 1. Every person who after the date fixed by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom) and in such a mode as may be from time to time directed by Order in Council.
2. The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorised to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in a Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.
3. Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

Trade mark, how described in pleading.

9. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Rules as to evidence.

10. In any prosecution for an offence against this Act, —
1. A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.
2. In the case of imported goods, evidence of the port of shipment shall be *primâ facie* evidence of the place or country in which the goods were made or produced.

Punishment of accessories.

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act, which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed.

Search warrant.

12. 1. Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control

in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

2. If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary the at time and place named in the notice, such goods or things will be forfeited, and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

3. Any goods or things forfeited under this section, or under any other provision of this Act, may be destroyed or otherwise disposed of, in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may innocently sustained in dealing with such goods.

13. (*Exonerations indictments.*)

14. (*Costs of defence or prosecution.*)

Limitation of prosecution.

15. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Prohibition on importation.

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows:

1. All such goods, and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.
2. Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.
3. The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.
4. Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

5. Such regulations may apply to all good the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
6. The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Treasury.
7. The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
8. All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal".
9. This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.

Implied warranty on sale of marked goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of Act as to false description not to apply in certain cases.

18. Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings.

19. 1. This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.
2. Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.
3. Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who bona fide acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

False representation as to Royal Warrant.

20. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Application of Act to Scotland.

21. In the application of the this Act to Scotland the following modifications shall be made:

The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same;

The expression "justice" means sheriff:

The expression "court of summary jurisdiction" means the Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

Application of Act to Ireland.

22. In the application of this Act to Ireland, the following modifications shall be made:

The expression "Summary Jurisdiction Acts" means, so far as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same:

The expression "court of summary jurisdiction" means justices acting under those Acts.

23. (*Repeal.*)

The Deeds of Arrangement Act, 1887.

50 & 51 Vict.

Cap. LVII.

An Act to provide for the Registration of Deeds of Arrangement (16th September, 1887).

Short title.

1. This Act may be cited for all purposes as the Deeds of Arrangement Act, 1887.

Extent of Act.

2. This Act shall not extend to Scotland.

3. (*Repealed, S. L. R. Act, 1908.*)

Application of Act.

4. 1. This Act shall apply to every deed of arrangement, as defined in this section, made after the commencement of this Act.

2. A deed of arrangement to which this Act applies shall include any of the following instruments, whether under seal or not, made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally (otherwise than in pursuance of the law for the time being in force relating to bankruptcy), that is to say:

a) An assignment of property;

b) A deed of or agreement for a composition;

And in cases where creditors of a debtor obtain any control over his property or business;

c) A deed of inspectorship entered into for the purpose of carrying on or winding up a business;

d) A letter of license authorising the debtor or any other person to manage, carry on, realise, or dispose of a business, with a view to the payment of debts; and

e) Any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business, with a view to the payment of his debts.

Avoidance of unregistered deeds of arrangement.

5. A deed of arrangement to which this Act applies shall be void unless the same shall have been registered under this Act within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of England or Ireland respectively, then within seven clear days after the

time at which it would, in the ordinary course of post, arrive in England or Ireland respectively, if posted within one week after the execution thereof, and unless the same shall bear such ordinary and ad valorem stamp as is under this Act provided.

Mode of registration.

6. The registration of a deed of arrangement under this Act shall be effected in the following manner:

1. A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the registrar within seven clear days after the execution of the said deed (in like manner as a bill of sale given by way of security for the payment of money is now required to be filed), together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors.
2. No deed shall be registered under this Act unless the original of such deed, duly stamped with the proper inland revenue duty, and in addition to such duty a stamp denoting a duty computed at the rate of one shilling for every hundred pounds or fraction of a hundred pounds of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, is produced to the registrar at the time of such registration.

Form of register.

7. The registrar shall keep a register wherein shall be entered as soon as conveniently may be after the presentation of a deed for registration, an abstract of the contents of every deed of arrangement registered under this Act, containing the following and any other prescribed particulars:

- a) The date of the deed;
- b) The name, address, and description of the debtor, and the place or places where his business is carried on, and the title of the firm or firms under which the debtor carries on business, and the name and address of the trustee (if any) under the deed;
- c) A short statement of the nature and effect of the deed, and of the composition in the pound payable thereunder;
- d) The date of registration;
- e) The amount of property and liabilities included under the deed, as estimated by the debtor.

Registrar and office for registration.

8. 1. The registrar of bills of sale in England and Ireland respectively shall be the registrar for the purposes of this Act.
2. In England the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, and in Ireland the Bills of Sale Office of the Queen's Bench Division of the High Court of Justice, shall be the office for the registration of deeds of arrangement.

Rectification of register.

9. The court or a judge upon being satisfied that the omission to register a deed of arrangement within the time required by this Act or that the omission or mis-statement of the name, residence, or description of any person was accidental or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may on the application of any party interested, and on such terms and conditions as are just and expedient, extend the time for such registration, or order such omission or mis-statement to be supplied or rectified by the insertion in the register of the true name, residence, or description.

Time for registration.

10. When the time for registering a deed of arrangement expires on a Sunday, or other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open.

Office copies.

11. Subject to the provisions of this Act, and to any rules made thereunder, any person shall be entitled to have an office copy of, or extract from, any deed registered under this Act upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy or extract purporting to be an office copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon.

Inspection of register and registered deeds.

12. 1. Any person shall be entitled, at all reasonable times, to search the register on payment of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled, at all reasonable times, to inspect, examine, and make extracts from any registered deed of arrangement, without being required to make a written application or to specify any particulars in reference thereto, upon payment of one shilling, or such other fee as may be prescribed, for each deed of arrangement inspected.
2. Provided that the said extracts shall be limited to the dates of execution and of registration, the names, addresses, and descriptions of the debtor and of the parties to the deed, a short statement of the nature and effect of the deed and any other prescribed particulars.

Local registration of copy of deeds.

13. 1. When the place of business or residence of the debtor who is one of the parties to a deed of arrangement, or who is referred to therein, is situate in some place outside the London bankruptcy district, as defined by the Bankruptcy Act, 1883, the registrar shall within three clear days after registration, and in accordance with the prescribed directions, transmit a copy of such deed to the registrar of the county court in the district of which such place of business or residence is situate.
2. Every copy so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of, the registered copy, in the like manner and upon the like terms, as to payment or otherwise, as near as may be, as in the case of deeds registered under this Act.
3. This section shall not apply to Ireland.

Affidavits.

14. Every affidavit required by or for the purposes of this Act may be sworn before a master of the Supreme Court of Judicature in England or Ireland, or before any person empowered to take affidavits in the Supreme Courts of Judicature of England or Ireland.

Fees. 38 & 39 Vict. c. 77, s. 26.

15. 1. There shall be taken, in respect of the registration of deeds of arrangement, and in respect of any office copies or extracts, or official searches made by the registrar, such fees as may be from time to time prescribed; and nothing in this Act contained shall make it obligatory on the registrar to do, or permit to be done, any act in respect of which any fee is specified or prescribed, except on payment of such fee.
2. The twenty-sixth section of the Supreme Court of Judicature Act, 1875, as regards England, and the eighty-fourth section of the Supreme Court of Judicature Act (Ireland), 1877, as regards Ireland, and any enactments for the time being in force amending or substituted for those sections respectively shall apply to fees under this Act, and orders under those sections may, if need be, be made in relation to such fees accordingly.
16. (*Repealed, S. L. R. Act, 1908.*)

Saving as to Bankruptcy Acts.

17. Nothing contained in this Act shall be construed to repeal or shall affect any provision of the law for the time being in force in relation to bankruptcy, or shall give validity to any deed or instrument which by law is an act of bankruptcy, or void or voidable.

Rules. 40 & 41 Vict. c. 57.

18. 1. Rules for carrying this Act into effect may be made, revoked, and altered from time to time by the like persons and in the like manner in which rules may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 to 1884, as regards England, and the Supreme Court of Judicature Act (Ireland), 1877, as regards Ireland.
2. Such rules as may be required for the purposes of this Act may be made at any time after the passing of this Act.

Interpretation of terms.

19. In this Act, unless the context otherwise requires:

- "Court or a judge" means the High Court of Justice and any judge thereof;
- "Creditors generally" includes all creditors who may assent or take the benefit of a deed of arrangement;
- "Person" includes a body of persons corporate or unincorporate;
- "Prescribed" means prescribed by rules to be made under this Act;
- "Property" has the same meaning as the same expression has in the Bankruptcy Act, 1883;
- "Rules" includes forms.

The Preferential Payments in Bankruptcy Act, 1888.¹⁾

51 & 52 Vict.

Cap. LXII.

An Act to amend the Law with respect to Preferential Payments in Bankruptcy, and in the winding-up of Companies (24th December, 1888).

Priority of debts.

1. 1. In the distribution of the property of a bankrupt, and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts:
 - a) All parochial or other local rates due from the bankrupt or the company at the date of the receiving order or, as the case may be, the commencement of the winding-up, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax assessed on the bankrupt or the company up to the fifth day of April next before the date of the receiving order, or, as the case may be, the commencement of the winding-up, and not exceeding in the whole one year's assessment;
 - b) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order, or, as the case may be, the commencement of the winding-up, not exceeding fifty pounds; and
 - c) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order or, as the case may be, the commencement of the winding-up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up.

¹⁾ Sections one, two and three, so far as they relate to companies, have been repealed by the Companies (Consolidation) Act 1908.

2. The foregoing debts shall rank, equally between themselves and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.
3. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.
4. In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof. Provided, that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.
5. This section, so far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act, 1883.
6. This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

Savings.

2. 1. Nothing in this Act shall alter the effect of section five of the Act twenty-eight and twenty-nine Victoria, chapter eighty-six, "To amend the law of partnership," or shall prejudice the provisions of the Friendly Societies Act, 1875, or shall affect the priority given to the payment of funeral and testamentary expenses by section one hundred and twenty-five of the Bankruptcy Act, 1883.
2. Nothing in this Act shall affect the provisions of the Stannaries Act, 1887.

Application of Act.

3. This Act shall apply only in the case of receiving orders and orders for the administration of the estates of deceased debtors according to the law of bankruptcy made and windings-up commenced after the commencement of this Act.

Extent of Act.

4. This Act shall not apply to Ireland.
- 5 & 6. (*Repealed S. L. R. Act, 1908.*)

Short title.

7. This Act may be cited as the Preferential Payments in Bankruptcy Act, 1888.

The Commissioners for Oaths Act, 1889.

52 & 53 Vict.

Cap. X.

Taking of oaths out of England.

3. 1. Any oath or affidavit required for the purpose of any court or matter in England, or for the purpose of the registration of any instrument in any part of the United Kingdom, may be taken or made in any place out of England before any person having authority to administer an oath in that place.
2. In the case of a person having such authority otherwise than by the law of a foreign country, judicial and official notice shall be taken of his seal or signature affixed, impressed, or subscribed to or on any such oath or affidavit.

Powers as to oaths and notarial acts abroad.

6. *As amended by 54 & 55 Vict. c. 50, s. 2.*
1. Every British ambassador, envoy, minister, chargé d'affaires, and secretary of embassy or legation exercising his functions in any foreign country, and every British consul-general, consul, vice-consul, acting consul, pro-consul,

consular agent, acting consul-general, acting vice-consul, and acting consular agent exercising his functions in any foreign place may, in that country or place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within the United Kingdom; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of the United Kingdom.

2. Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any person authorised by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

Factors Act, 1889.

52 & 53 Vict.

Cap. XLV.

An Act to amend and consolidate the Factors Acts (26th August 1889).

Preliminary.

Definitions.

1. For the purposes of this Act:

1. The expression "mercantile agent" shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.
2. A person shall be deemed to be in possession of goods or of the documents of title to goods, where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf.
3. The expression "goods" shall include wares and merchandise.
4. The expression "document of title" shall include any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.
5. The expression "pledge" shall include any contract pledging, or giving a lien or security on, goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.
6. The expression "person" shall include any body of persons corporate or unincorporate.

Dispositions by Mercantile Agents.

Powers of mercantile agent with respect to disposition of goods.

2. 1. Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.
2. Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent;

provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

3. Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.
4. For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

Effect of pledges of documents of title.

3. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

Pledge for antecedent debt.

4. Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

Rights acquired by exchange of goods or documents.

5. The consideration necessary for the validity of a sale, pledge, or other disposition, of goods, in pursuance of this Act, may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

Agreements through clerks, &c.

6. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

Provisions as to consignors and consignees.

7. 1. Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.
2. Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition, by a mercantile agent.

Dispositions by Sellers and Buyers of Goods.

Disposition by seller remaining in possession.

8. Where a person, having sold goods, continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Disposition by buyer obtaining possession.

9. Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer, by that person or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to

any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Effect of transfer of documents on vendor's lien or right of stoppage in transitu.

10. Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the lastmentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage in transitu as the transfer of a bill of lading has for defeating the right of stoppage in transitu.

Supplemental.

Mode of transferring documents.

11. For the purposes of this Act, the transfer of a document may be by endorsement, or, where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

Saving for rights of true owner.

12. 1. Nothing in this Act shall authorise an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing.
2. Nothing in this Act shall prevent the owner of goods from recovering the goods from an agent or his trustee in bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.
3. Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent.

Saving for common law powers of agent.

13. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

14 & 15. (*Repealed, S. L. R. Act, 1908.*)

Extent of Act.

16. This Act shall not extend to Scotland.

Short title.

17. This Act may be cited as the Factors Act, 1889.

The Arbitration Act, 1889.

52 & 53 Viet.

Cap. XLIX.

An Act for amending and consolidating the Enactments relating to Arbitration (26th August 1889).

References by Consent out of Court.

Submission to be irrevocable, and to have effect as an order of court.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of court.

Provisions implied in submissions.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule to this Act, so far as they are applicable to the reference under the submission.

Reference to official referee.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

Power to stay proceedings where there is a submission.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

5. In any of the following cases:

- a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator;
- b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy;
- c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him;
- d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention

- a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

Provided that the court or a judge may set aside any appointment made in pursuance of this section.

Powers of arbitrator.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power

- a) To administer oaths to or take the affirmations of the parties and witnesses appearing; and
- b) To state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and
- c) To correct in an award any clerical mistake or error arising from any accidental slip or commission.

Witnesses may be summoned by subpoena.

8. Any party to a submission may sue out a writ of subpoena ad testificandum, or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Power to enlarge time for making award.

9. The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not.

Power to remit award.

10. 1. In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.
2. Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

Power to set aside award.

11. 1. Where an arbitrator or umpire has misconducted himself, the court may remove him.
2. Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside.

Enforcing award.

12. An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect.

References under Order of Court.**Reference of question in cause for report.**

13. 1. Subject to rules of court and to any right to have particular cases tried by a jury, the court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the crown) for inquiry or report to any official or special referee.
- 2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Reference of cause or question therein for trial.

14. In any cause or matter (other than a criminal proceeding by the crown),—
 - a) If all the parties interested who are not under disability consent; or,
 - b) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers; or
 - c) If the question in dispute consists wholly or in part of matters of account;
 the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court.

Powers and remuneration of referees and arbitrators.

15. 1. In all cases of reference to an official or special referee or arbitrator under an order of the court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the court, and

shall have such authority, and shall conduct the reference in such manner, as may be prescribed by rules of court, and subject thereto as the court or a judge may direct.

2. The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury.
3. The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the court or a judge shall be determined by the court or a judge.

Court to have powers as in references by consent.

16. The court or a judge shall, as to references under order of the court or a judge, have all the powers which are by this Act conferred on the court or a judge as to references by consent out of the court.

Court of Appeal to have powers of court.

17. Her Majesty's Court of Appeal shall have all the powers conferred by this Act on the court or a judge thereof under the provisions relating to references under order of the court.

General.

Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.

18. 1. The court or a judge may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.
2. The court or a judge may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official referee, or before any arbitrator or umpire.

Statement of case pending arbitration.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

Costs.

20. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Exercise of powers by masters and other officers.

21. Provision may from time to time be made by rules of court for conferring on any master or other officer of the supreme court, all or any of the jurisdiction conferred by this Act on the court or a judge.

Penalty for perjury.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Crown to be bound.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which her Majesty the Queen, either in right of the crown, or of the duchy of Lancaster or otherwise, or the duke of Cornwall, is a party, but nothing in this Act shall empower the court or a judge to order any proceedings to which her Majesty or the duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of her Majesty or the duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the crown.

Application of Act to references under statutory powers.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.

Saving for pending arbitrations.

25. This Act shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

Repeal.

26. 1. (*Repealed, S. L. R. Act, 1908.*)

2. Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

Definitions.

27. In this Act, unless the contrary intention appears,

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

“Court” means her Majesty’s high court of justice.

“Judge” means a judge of her Majesty’s high court of justice.

“Rules of court” means the rules of the supreme court made by the proper authority under the Judicature Acts.

Extent.

28. This Act shall not extend to Scotland or Ireland.

Short title.

29. (*Repealed, S. L. R. Act, 1908.*)

30. This Act may be cited as the Arbitration Act, 1889.

Schedules.

The first Schedule.

Provisions to be Implied in Submissions.

a) If no other mode of reference is provided, the reference shall be to a single arbitrator.

b) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

c) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

f) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

g) The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation.

h) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

i) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

The second Schedule.

(*Repealed S. L. R. Act, 1908.*)

The Partnership Act, 1890.

53 & 54 Vict.

Cap. XXXIX.

An act to declare and amend the law of partnership.
(14th August 1890.)

Nature of partnership.

Definition of partnership. 25 & 26 Vict. c. 89.¹⁾

1. Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
2. But the relation between members of any company or association which is
 - a) Registered as a company under the Companies Act, 1862¹⁾, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or
 - b) Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter; or
 - c) A company engaged in working mines within and subject to the jurisdiction of the Stannaries;is not a partnership within the meaning of this Act.

Rules for determining existence of partnership.

2. In determining whether a partnership does or does not exist, regard shall be had to the following rules:
 1. Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.
 2. The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.
 3. The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular —
 - a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
 - b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
 - c) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;
 - d) The advance of money by way of loan to a person engaged or about to engage in any business by a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto;

¹⁾ See now Companies (Consolidation) Act, 1908

- e) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency.

3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

Meaning of firm.

4. 1. Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.
2. In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief pro ratâ from the firm and its other members.

Relations of partners to persons dealing with them.

Power of partner to bind the firm.

5. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

Partners bound by acts on behalf of firm.

6. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

Partner using credit of firm for private purposes.

7. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

Effect of notice that firm will not be bound by acts of partner.

8. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Liability of partners.

9. Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts.

Liability of the firm for wrongs.

10. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Misapplication of money or property received for or in custody of the firm.

11. In the following cases; namely —

- a) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and
 - b) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;
- the firm is liable to make good the loss.

Liability for wrongs joint and several.

12. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of the two last preceding sections.

Improper employment of trust-property for partnership purposes.

13. If a partner, being a trustee, improperly employs trust-property in the business or on the account of the partnership, no other partner is liable for the trust-property to the persons beneficially interested therein:

Provided as follows:

1. This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and
2. Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

Persons liable by "holding out".

14. 1. Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.
2. Provided that where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators estate or effects liable for any partnership debts contracted after his death.

Admissions and representations of partners.

15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

Notice to acting partner to be notice to the firm.

16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liabilities of incoming and outgoing partners.

17. 1. A person who is admitted a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.
2. A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.
3. A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as

newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guaranty by change in firm.

18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

Relations of partners to one another.

Variation by consent of terms of partnership.

19. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing.

Partnership property.

20. 1. All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.
2. Provided that the legal estate or interest in any land, or in Scotland the title to and interest in any heritable estate, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.
3. Where co-owners of an estate or interest in any land, or in Scotland of any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

Property bought with partnership money.

21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

Conversion into personal estate of land held as partnership property.

22. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal or moveable and not real or heritable estate.

Procedure against partnership property for a partner's separate judgment debt.

23. 1. A writ of execution shall not issue against any partnership property except on a judgment against the firm.
2. The High Court, or a judge thereof, or the Chancery Court of the county palatine of Lancaster, or a county court, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the

judgment creditor by the partner, or which the circumstances of the case may require.

3. The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.
4. This section shall apply in the case of a cost-book company as if the company were a partnership within the meaning of this Act.
5. This section shall not apply to Scotland.

Rules as to interests and duties of partners subject to special agreement.

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

1. All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.
2. The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him —
 - a) In the ordinary and proper conduct of the business of the firm; or,
 - b) In or about anything necessarily done for the preservation of the business or property of the firm.
3. A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent. per annum from the date of the payment or advance.
4. A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.
5. Every partner may take part in the management of the partnership business.
6. No partner shall be entitled to remuneration for acting in the partnership business.
7. No person may be introduced as a partner without the consent of all existing partners.
8. Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.
9. The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

Expulsion of partner.

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

Retirement from partnership at will.

- 26.** 1. Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.
2. Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

Where partnership for term is continued over continuance on old terms presumed.

- 27.** 1. Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.
2. A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

Duty of partners to render accounts, &c.

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Accountability of partners for private profits.

29. 1. Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connexion.
2. This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

Duty of partner not to compete with firm.

30. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

Rights of assignee of share in partnership.

31. 1. An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.
2. In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Dissolution of partnership, and its consequences.**Dissolution by expiration or notice.**

32. Subject to any agreement between the partners, a partnership is dissolved —

- a) If entered into for a fixed term, by the expiration of that term;
- b) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking;
- c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if, no date is so mentioned, as from the date of the communication of the notice.

Dissolution by bankruptcy, death, or charge.

33. 1. Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.
2. A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

Dissolution by illegality of partnership.

34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

Dissolution by the Court.

35. On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:

- a) When a partner is found lunatic by inquisition, or in Scotland by cognition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf

- of that partner by his committee or next friend or person having title to intervene as by any other partner;
- b) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;
 - c) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
 - d) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
 - e) When the business of the partnership can only be carried on at a loss;
 - f) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

Rights of persons dealing with firm against apparent members of firm.

36. 1. Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.
2. An advertisement in the London Gazette as to a firm whose principal place of business is in England or Wales, in the Edinburgh Gazette as to a firm whose principal place of business is in Scotland, and in the Dublin Gazette as to a firm whose principal place of business is in Ireland, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.
3. The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

Rights of partners to notify dissolution.

37. On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

Continuing authority of partners for purposes of winding-up.

38. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Rights of partners as to application of partnership property.

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

Apportionment of premium where partnership prematurely dissolved.

40. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard

to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

- a) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Rights were partnership dissolved for fraud or misrepresentation.

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled —

- a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him; and is
- b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and
- c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

Rights of outgoing partner in certain cases to share profits made after dissolution.

42. 1. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets.

2. Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Retiring or deceased partner's share to be a debt.

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Rules for distribution of assets on final settlement of accounts.

44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

- a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;
- b) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order.
 1. In paying the debts and liabilities of the firm to persons who are not partners therein.
 2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital.
 3. In paying to each partner rateably what is due from the firm to him in respect of capital.
 4. The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

Supplemental.

Definitions of "court" and "business".

45. In this Act, unless the contrary intention appears, —

The expression "court" includes every court and judge having jurisdiction in the case.

The expression "business" includes every trade, occupation, or profession.

Saving for rules of equity and common law.

46. The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

Provision as to bankruptcy in Scotland.

47. 1. In the application of this Act to Scotland the bankruptcy of a firm or of an individual shall mean sequestration under the Bankruptcy (Scotland) Acts, and also in the case of an individual the issue against him of a decree of cessio bonorum.
2. Nothing in this Act shall alter the rules of the law of Scotland relating to the bankruptcy of a firm or of the individual partners thereof.

Repeal.

48 & 49. (*Repealed, S. L. R. Act, 1908.*)

Short title.

50. This Act may be cited as the Partnership Act, 1890.

The Factors (Scotland) Act, 1890.

53 & 54 Vict.

Cap. XL.

An Act to extend the Provisions of the Factors Act, 1889,
to Scotland (14th August 1890).

Application of 52 & 53 Vict. c. 45. to Scotland.

1. Subject to the following provisions, the Factors Act, 1889, shall apply to Scotland:

1. The expression "lien" shall mean and include right of retention; the expression "vendor's lien" shall mean and include any right of retention competent to the original owner or vendor; and the expression "set-off" shall mean and include compensation.
2. In the application of section five of the recited Act, a sale, pledge, or other disposition of goods shall not be valid unless made for valuable consideration.

Short title.

2. This Act may be cited as the Factors (Scotland) Act, 1890.

The Bankruptcy Act, 1890.

53 & 54 Vict.

Cap. LXXI.

An Act to amend the Law of Bankruptcy (18th August, 1890).

Acts of bankruptcy.

1. A debtor commits an act of bankruptcy if execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days. Provided that, where an interpleader sum-

mons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days. Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of section four of the principal Act.

Public examination of debtor.

2. 1. The notes taken of a debtor's public examination in pursuance of section seventeen of the principal Act shall be read over either to or by the debtor.
2. Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, the court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such place as to the court seems expedient.

Compositions and schemes of arrangement.

3. 1. Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.
2. In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three fourths in value of all the creditors who have proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors.
3. The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.
4. Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.
5. The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.
6. The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.
7. The court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.
8. If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the court is required where the debtor is adjudged bankrupt to refuse his discharge, the court shall refuse to approve the proposal.
9. If any facts are proved on proof of which the court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than seven shillings and sixpence in the pound on all the unsecured debts provable against the debtor's estate.
10. In any other case the court may either approve or refuse to approve the proposal.

11. If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the court.
12. A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.
13. A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.
14. The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.
15. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the official receiver or the trustee, or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.
16. If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section twenty-seven and Part V. of the principal Act shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy", "bankrupt", and "order of adjudication", included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme.
17. Part III. of the principal Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee", "bankruptcy", "bankrupt", and "order of adjudication", as in the last preceding sub-section.
18. No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.
19. The acceptance by a creditor of a composition or scheme shall not release any person who under the principal Act and this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

Appointment of trustee.

4. A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

Committee of inspection.

5. Sub-section one of section twenty-two of the principal Act (relating to the committee of inspection) shall be read and construed as if the words "from among the creditors" were substituted for the words "from among the creditors qualified to vote". Provided that a creditor who is appointed a member of a committee of inspection shall not be qualified to act until he has proved his debt and the proof has been admitted.

Resolution for acceptance of composition or scheme.

6. The resolution required for accepting a proposal for a composition or scheme in pursuance of section twenty-three of the principal Act shall be the like resolution as is required for accepting a like proposal made by a debtor before an adjudication of bankruptcy.

Arrest of absconding debtor.

7. Section twenty-five of the principal Act (relating to the arrest of a debtor under certain circumstances) shall be read and construed as if the words "believing that he has absconded, or is about to abscond", were substituted for the words "believing that he is about to abscond".

Discharge of bankrupt.

8. 1. A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open court.
2. On the hearing of the application the court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property: Provided that the court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanour under the Debtors Act, 1869, or the principal Act, or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, unless for special reasons the court otherwise determines, and shall, on proof of any of the facts herein-after mentioned, either—
 - i) refuse the discharge; or
 - ii) suspend the discharge for a period of not less than two years; or
 - iii) suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or
 - iv) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after acquired property of the bankrupt in such manner and subject to such conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts.

Provided, that if at any time after the expiration of two years from the date of any order made under this section the bankrupt shall satisfy the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

3. The facts herein-before referred to are:—

- a) That the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;
- b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;

- c) That the bankrupt has continued to trade after knowing himself to be insolvent;
 - d) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;
 - e) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
 - f) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;
 - g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;
 - h) That the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action;
 - i) That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
 - j) That the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities;
 - k) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors;
 - l) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.
4. For the purposes of this section a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities.
 5. For the purposes of this section the report of the official receiver shall be *prima facie* evidence of the statements therein contained.
 6. Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.
 7. The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.
 8. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of court; and the court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge but before its revocation.

Disqualification of bankrupt.

9. No disqualification arising by virtue of section thirty-two of the principal Act shall exceed a period of five years from the date of any discharge which may have been, or may hereafter be, granted under and by virtue of the principal Act, or of this Act. It is hereby declared that the disqualifications arising by virtue of the said section include disqualification for being elected to, or holding or executing the office of, a member of a county council.

Effect of order of discharge.

10. An order of discharge shall not release the bankrupt from any liability under a judgment against him in an action for seduction, or under an affiliation

order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

Duties of sheriff as to goods taken in execution.

11. 1. Where any goods of a debtor are taken in execution and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.
2. Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

Sale of assets by sheriff.

12. Where any goods of a debtor are taken in execution, and the sheriff has notice of another execution or other executions, the court shall not consider an application for leave to sell privately until the notice directed by rules of court has been given to the other execution creditor or creditors, who may appear before the court and be heard upon the application.

Disclaimer.

13. The period of twelve months shall be substituted for each of the periods of three months and two months limited by subsection one of section fifty-five of the principal Act, and such period of twelve months may be extended by the court. The court may, if it thinks fit, modify the terms prescribed by the proviso in subsection six of the same section so as to make the person in whose favour the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the bankruptcy petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

Deputy of official receiver.

14. The Board of Trade may by order, for reasons to be stated therein, direct in any special case that any of its officers mentioned in the order shall be capable of discharging any portion of the duties of the official receiver for the performance of which it is in the opinion of the Board expedient that some person other than the official receiver be appointed, provided that no additional expense be thereby incurred.

Remuneration of trustee, &c.

15. 1. The part of the trustee's remuneration to be payable in pursuance of section seventy-two of the principal Act on the amount realised shall be payable only on the amount realised by the trustee.
2. Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Board of Trade, approve.
3. The sanction required under section seventy-three of the principal Act for the employment of solicitors and other persons must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Trustee to furnish list of creditors.

16. The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors. The trustee or official receiver shall be entitled to charge for such list the sum of threepence per folio of seventy-two words, together with the cost of the postage thereof.

Statement of accounts.

17. It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts. Provided, the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, such sum to be repaid to him out of the estate if the creditors or the court so direct.

Summons of meeting.

18. It shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall call such meeting accordingly within fourteen days. Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or official receiver as the case may be a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the court so direct.

Removal of trustee.

19. The power of the Board of Trade to remove a trustee under section eighty-six of the principal Act shall extend to any case in which the Board are of opinion that the trustee is, by reason of lunacy, or continued sickness, or absence, incapable of performing his duties, or that his connexion with or relation to the bankrupt, or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally, or where in any other matter he has been removed from office on the ground of misconduct.

Relation back in case of receiving order against judgment debtor.

20. Where a receiving order is made against a judgment debtor in pursuance of section one hundred and three of the principal Act, the bankruptcy of the debtor shall be deemed to have relation back to and to commence at the time of the order, or, if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order; and section forty-eight of the principal Act shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

Administration in bankruptcy of estate of person dying insolvent.

21. 1. An order for the administration of a deceased person's estate may be made under section one hundred and twenty-five of the principal Act before the expiration of two months from the date of the grant of probate or letters of administration without the concurrence or proof mentioned in sub-section three of that section.
2. The power under the same section to transfer to a court exercising jurisdiction in bankruptcy proceedings commenced in any other court for the administration of a deceased debtor's estate may be exercised without the application of any creditor, and whenever the latter court is satisfied that the estate is insufficient to pay its debts.
3. In cases of administration in bankruptcy, in pursuance of section one hundred and twenty-five of the principal Act and this section, of estates of persons dying insolvent, the creditors shall have the same powers as to ap-

pointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of the principal Act and this Act, relating to trustees and committees of inspection, shall apply to trustees and committees of inspection appointed under the power conferred by this section.

Proxies.

22. 1. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver of the debtor's estate, or by some other official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment, or of any commissioner to administer oaths in the Supreme Court.
2. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.
3. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:—
- a) For or against any specific proposal for a composition or scheme of arrangement;
 - b) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection;
 - c) On all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

Interest on debts.

23. Where a debt has been proved upon a debtor's estate under the principal Act, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

Swearing of affidavits in England and Wales.

24. Any affidavit to be used in a bankruptcy court may be sworn not only before the persons named in section one hundred and thirty-five of the principal Act, but also in England and Wales before a justice of the peace for the county or place where it is sworn.

Returns to Board of Trade of receipts and expenditure under 50 & 51 Vict. c. 57.

25. 1. The general annual report which, by section one hundred and thirty-one of the principal Act, the Board of Trade is required to cause to be prepared and laid before Parliament, shall include a report of proceedings under the Deeds of Arrangement Act, 1887.
2. For the purposes of such report—
- a) The registrar of bills of sale shall make to the Board of Trade such returns of the registration of deeds of arrangement, at such times, and in such manner and form, as may be prescribed;
 - b) Every trustee under any deed of arrangement, as defined by section four of the Deeds of Arrangement Act, 1887, shall, within thirty days of the first day of January in each year, transmit to the Board of Trade, or as they direct, an account of his receipts and payments as such trustee, in the prescribed form, and verified in the prescribed manner. If any trustee fails to transmit such account, the judge of the High Court to whom bankruptcy business has been assigned may, for the purpose of enforcing the provisions of this section, exercise, on the application of the Board of Trade in the matter, all the powers conferred on the court by sub-section five of section one hundred and two of the principal

Act in cases of bankruptcy. The term "trustee" in this section shall include any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement.

3. The accounts transmitted to the Board of Trade in pursuance of this section shall be open to inspection by any creditor on payment of the prescribed fee.

Penal provisions of 32 & 33 Vict. c. 62.

26. Section eleven of the Debtors Act, 1869, shall have effect as if there were substituted therein for the words "if within four months next before the presentation of a bankruptcy petition against him" the words "if within four months next before the presentation of a bankruptcy petition by or against him, or in case of a receiving order made under section hundred and three of the Bankruptcy Act, 1883, before the date of the order".

Amendment of 24 & 25 Vict. c. 96. s. 85.

27. 1. (*Repealed, S. L. R. Act, 1908.*)

2. A statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any of the misdemeanours referred to in the said section eighty-five.

Amendment of 46 & 47 Vict. c. 52. s. 42.

28. Section forty-two of the principal Act, relating to the power of a landlord to distrain for rent, shall be read and construed as if the words "six months' rent" were substituted for the words "one year's rent".

29 & 30. (*Repealed, S. L. R. Act, 1908.*)

Short title and construction.

31. 1. This Act may be cited as the Bankruptcy Act, 1890; and the principal Act and this Act may be cited collectively as the Bankruptcy Acts, 1883 and 1890.
2. This Act and the principal Act shall be construed as one Act.

The Merchandise Marks Act, 1891.

54 & 55 Vict.

Cap. XV.

An Act to amend the Merchandise Marks Act, 1887 (11th May 1891).

Customs entry to be trade description.

1. The customs entry relating to imported goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

Official prosecutions.

2. 1. The Board of Trade may, with the concurrence of the Lord Chancellor, make regulations providing that in cases appearing to the Board to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Board of Trade, and prescribing the conditions on which such prosecutions are to be so undertaken. The expenses of prosecutions so undertaken shall be paid out of moneys provided by Parliament.
2. All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act, and shall be published under the authority of Her Majesty's Stationery Office.
3. Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations.

Short title.

3. This Act may be cited as the Merchandise Marks Act, 1891, and the Merchandise Marks Act, 1887, and this Act may be cited together as the Merchandise Marks Acts, 1887 and 1891.

Stamp Act, 1891.

54 & 55 Vict.

Cap. XXXIX.

An Act to consolidate the Enactments granting and relating to the Stamp Duties upon Instruments and certain other enactments relating to Stamp Duties (21st July 1891).

Charge of Duty upon Instruments.

1. From and after the commencement of this Act the stamp duties to be charged for the use of Her Majesty upon the several instruments specified in the First Schedule to this Act shall be the several duties in the said schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the enactments repealed by this Act, and shall be subject to the exemptions contained in this Act and in any other Act for the time being in force.

Bank Notes, Bills of Exchange, and Promissory Notes.

Meaning of banker and bank note.

29. For the purposes of this Act the expression "banker" means any person carrying on the business of banking in the United Kingdom, and the expression "Bank note" includes—

- a) Any bill of exchange or promissory note issued by any banker, other than the Bank of England, for the payment of money not exceeding one hundred pounds to the bearer on demand; and
- b) Any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding one hundred pounds on demand, whether the same be so expressed or not and in whatever form, and by whomsoever the bill or note is drawn or made.

Bank notes may be re-issued.

30. A bank note issued duly stamped, or issued unstamped by a banker duly licensed or otherwise authorised to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of the re-issuing.

Meaning of "bill of exchange."

32. For the purposes of this Act the expression "bill of exchange" includes draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money; and the expression "bill of exchange payable on demand" includes—

- a) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; and
- b) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf.

Meaning of "promissory note."

33. 1. For the purposes of this Act the expression "promissory note" includes any document or writing (except a bank note) containing a promise to pay any sum of money.
2. A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed a promissory note for that sum of money.

Provisions for use of adhesive stamps on bills and notes.¹⁾

34. 1. The fixed duty of one penny on a bill of exchange payable on demand or at sight or on presentation may be denoted by an adhesive stamp, which, where the bill is drawn in the United Kingdom, is to be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.
2. The ad valorem duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps.

Provisions as to stamping foreign bills and notes.

35. 1. Every person into whose hands any bill of exchange or promissory note drawn or made out of the United Kingdom, comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates, or pays the bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto.
2. Provided as follows:
- a) If at the time when any such bill or note comes into the hands of any bona fide holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as relates to the holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person;
- b) If at the time when any such bill or note comes into the hands of any bona fide holder there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.
3. But neither of the foregoing provisoes is to relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp.

As to bills and notes purporting to be drawn abroad.

36. A bill of exchange or promissory note which purports to be drawn or made out of the United Kingdom is, for the purpose of determining the mode in which the stamp duty thereon is to be denoted, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom.

Terms upon which bills and notes may be stamped after execution.

37. 1. Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings if the bill or note be not then payable according to its tenor, or of ten pounds if the same be so payable.
2. Except as aforesaid, no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof.

One bill only of a set need be stamped.

39. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner

¹⁾ See 9 Edw. VII c. 48, s. 10, *infra*.

negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

Bills of Lading.

40. 1. A bill of lading is not to be stamped after the execution thereof.
 2. Every person who makes or executes any bill of lading not duly stamped shall incur a fine of fifty pounds.

Charter-parties.

Provisions as to duty on charter-party.

49. 1. For the purposes of this Act the expression "charter-party" includes any agreement or contract for the charter of any ship or vessel or any memorandum, letter, or other writing between the captain, master, or owner of any ship or vessel, and any other person for or relating to the freight or conveyance of any money, goods, or effects on board of the ship or vessel.
 2. The duty upon a charter-party may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is last executed, or by whose execution it is completed as a binding contract.

Charter-parties executed abroad.

50. Where a charter-party is first executed out of the United Kingdom without being duly stamped, any party thereto may, within ten days after it has been first received in the United Kingdom, and before it has been executed by any person in the United Kingdom, affix thereto an adhesive stamp denoting the duty chargeable thereon, and at the same time cancel such adhesive stamp, and the instrument when so stamped shall be deemed duly stamped.

Terms upon which charter-parties may be stamped after execution.

51. A charter-party may be stamped with an impressed stamp after execution upon the following terms; that is to say,
 1. Within seven days after the first execution thereof, on payment of the duty and a penalty of four shillings and sixpence.
 2. After seven days, but within one month after the first execution thereof, on payment of the duty and a penalty of ten pounds;
 and shall not in any other case be stamped with an impressed stamp.

Policies of Insurance.¹⁾

Meaning of policy of insurance.

91. For the purposes of this Act the expression "policy of insurance" includes every writing whereby any contract of insurance is made or agreed to be made, or is evidenced and the expression "insurance" includes assurance.

Policies of Sea Insurance.

Meaning of policy of sea insurance.

92. 1. For the purposes of this Act the expression "policy of sea insurance" means any insurance (including re-insurance) made upon any ship or vessel, or upon the machinery, tackle, or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest, which may be lawfully insured in or relating to, any ship or vessel, and includes any insurance of goods, merchandise or property for any transit which includes not only a sea risk, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance.
 2. Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise, or property from any risk, loss or damage

¹⁾ See 1 Edw. VII c. 7, s. 11; 3 Edw. VII c. 46, s. 8; 8 Edw. VII c. 16, s. 5, *infra*.

such agreement or engagement shall be deemed to be a contract for sea insurance.

Contract to be in writing. 25 & 26 Vict. c. 63.

93. 1. A contract for sea insurance (other than such insurance as is referred to in the fifty-fifth section¹⁾ of the Merchant Shipping Act Amendment Act, 1862) shall not be valid unless the same is expressed in a policy of sea insurance.
2. No policy for sea insurance made for time shall be made for any time exceeding twelve months.
3. A policy for sea insurance shall not be valid unless it specifies the particular risk or adventure, the names of the subscribers or underwriters, and the sum or sums insured, and is made for a period not exceeding twelve months.

Policy for voyage and time chargeable with two duties.

94. Where any sea insurance is made for a voyage and also for time, or to extend or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy is to be charged with duty as a policy for a voyage, and also with duty as a policy for time.

No policy valid unless duly stamped.

95. 1. A policy of sea insurance may not be stamped at any time after it is signed or underwritten by any person, except in the two cases following; that is to say:
- a) Any policy of mutual insurance having a stamp impressed thereon may, if required, be stamped with an additional stamp provided that at the time when the additional stamp is required the policy has not been signed or underwritten to an amount exceeding the sum or sums which the duty impressed thereon extends to cover;
 - b) Any policy made or executed out of, but being in any manner enforceable within, the United Kingdom, may be stamped at any time within ten days after it has been first received in the United Kingdom on payment of the duty only.
2. Provided that a policy of sea insurance shall for the purpose of production in evidence be an instrument which may legally be stamped after the execution thereof, and the penalty payable by law on stamping the same shall be the sum of one hundred pounds.

Legal alterations in policies may be made under certain restrictions.

96. Nothing in this Act shall prohibit the making of any alteration which may lawfully be made in the terms and conditions of any policy of sea insurance after the policy has been underwritten; provided that the alteration be made before notice of the determination of the risk originally insured, and that it do not prolong the time covered by the insurance thereby made beyond the period of six months in the case of a policy made for a less period than six months, or beyond the period of twelve months in the case of a policy made for a greater period than six months, and that the articles insured remain the property of the same person or persons, and that no additional or further sum be insured by reason or means of the alteration.

Penalty on assuring unless policy stamped.

97. 1. If any person:
- a) Becomes an insurer upon any sea insurance or enters into any contract upon sea insurance, or directly or indirectly receives or contracts or takes credit in account for any premium or consideration for any sea insurance or knowingly takes upon himself any risk, or renders himself liable to pay, or pays, any sum of money upon any loss, peril or contingency relative to any sea insurance, unless the insurance is expressed in a policy of sea insurance duly stamped; or
 - b) Makes or effects, or knowingly procures to be made or effected, any sea insurance or directly or indirectly gives or pays, or renders himself liable to pay, any premium or consideration for any sea insurance, or

¹⁾ See now Merchant Shipping Act, 1894, s. 506.

- enters into any contract of sea insurance, unless the insurance is expressed in a policy insurance duly stamped; or
- e) Is concerned in any fraudulent contrivance or device, or is guilty of any wilful act, neglect, or omission, with intent to evade the duties payable on policies of sea insurance, or whereby the duties may be evaded, he shall for every such offence incur a fine of one hundred pounds.
2. Every broker, agent or other person negotiating or transacting any sea insurance contrary to the true intent and meaning of this Act, or writing any policy of sea insurance upon material not duly stamped, shall for every such offence incur a fine of one hundred pounds, and shall not have any legal claim to any charge for brokerage, commission or agency, or for any money expended or paid by him with reference to the insurance, and any money paid to him in respect of any such charge shall be deemed to be paid without consideration, and shall remain the property of his employer.
3. If any person makes or issues, or causes to be made or issued, any document purporting to be a copy of a policy of sea insurance and there is not at the time of the making or issue in existence a policy duly stamped whereof the said document is a copy, he shall for such offence, in addition to any other fine or penalty to which he may be liable, incur a fine of one hundred pounds.

Warrants for Goods.

111. 1. For the purposes of this Act the expression "warrant for goods" means any document or writing, being evidence of the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods, wares, or merchandise lying in any warehouse or dock, or upon any wharf, and signed or certified by or on behalf of the person having the custody of the goods, wares, or merchandise.
2. The duty upon a warrant for goods may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is made, executed or issued.
3. Every person who makes, executes, or issues, or receives or takes by way of security or indemnity, any warrant for goods not being duly stamped, shall incur a fine of twenty pounds.

Schedule I.

AGREEMENT or any MEMORANDUM of an AGREEMENT, made in England or Ireland under hand only, or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument

£	s.	d.
0	0	6

Exemptions.

1. Agreement or memorandum the matter whereof is not of the value of 5*l*.
3. Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise.
4. Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.

BANK NOTE

For money not exceeding 1 <i>l</i> .	0	0	5
Exceeding 1 <i>l</i> . and not exceeding 2 <i>l</i> .	0	0	10
„ 2 <i>l</i> . „ 5 <i>l</i> .	0	1	3
„ 5 <i>l</i> . „ 10 <i>l</i> .	0	1	9
„ 10 <i>l</i> . „ 20 <i>l</i> .	0	2	0
„ 20 <i>l</i> . „ 30 <i>l</i> .	0	3	0
„ 30 <i>l</i> . „ 50 <i>l</i> .	0	5	0
„ 50 <i>l</i> . „ 100 <i>l</i> .	0	8	6

BILL OF EXCHANGE

Payable on demand or at sight or on presentation	0	0	1
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BILL OF EXCHANGE of any other kind whatsoever (*except a bank note*) and **PROMISSORY NOTE** of any kind whatsoever (*except a bank note*) — drawn, or expressed to be payable, or actually paid, or endorsed, or in any manner negotiated in the United Kingdom¹).

	£	s.	d.
Where the amount or value of the money for which the bill or note is drawn or made does not exceed 5 l.	0	0	1
Exceeds 5 l. and does not exceed 10 l.	0	0	2
„ 10 l.	0	0	3
„ 25 l. „ 50 l.	0	0	6
„ 50 l. „ 75 l.	0	0	9
„ 75 l. „ 100 l.	0	1	0
„ 100 l.—			
for every 100 l., and also for any fractional part of 100 l., of such amount or value	0	1	0

Exemptions.

1. Bill or note issued by the Bank of England or the Bank of Ireland
2. Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.
3. Letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.
4. Letter of credit granted in the United Kingdom, authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.
5. Warrant or order for the payment of any annuity granted by the national debt commissioners, or for the payment of any dividend or interest on any share in the Government or Parliamentary stocks or funds.

BILL OF LADING of or for any goods, merchandise, or effects to be exported or carried coastwise 0 0 6

CHARTER-PARTY 0 0 6

CHEQUE. *See* BILL OF EXCHANGE.

LETTER OF CREDIT. *See* BILL OF EXCHANGE.

LETTER OR POWER OF ATTORNEY, and COMMISSION, FACTORY, MANDATE, or other instrument in the nature thereof:

1. For the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more 0 0 1
2. By any petty officer, seaman, marine, or soldier serving as a marine, or his representatives, for receiving prize money or wages 0 1 0
3. For the receipt of the dividends or interest of any stock:
Where made for the receipt of one payment only 0 1 0
In any other case 0 5 0
4. For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money, not exceeding 20 l., or any periodical payments not exceeding the annual sum of 10 l. (*not being herein-before charged*) 0 5 0
5. For the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds:
Where the value of the stocks or funds does not exceed 20 l. 0 5 0
In any other case 0 10 0
6. Of any kind whatsoever not herein-before described 0 10 0

NOTARIAL ACT of any kind whatsoever (*except a protest of a bill of exchange or promissory note or any notarial instrument to be expedited and recorded in any register of sasines*) 0 1 0

POLICY OF SEA INSURANCE—²)

1. Where the premium or consideration does not exceed the rate of 2s. 6d. per centum of the sum insured 0 0 1
2. In any other case
a) For or upon any voyage
In respect of every full sum of 100 l., and also any fractional part of 100 l. thereby insured 0 0 3

¹) See 62 & 63 Viet. c. 9, s. 10, *infra*.

²) See 8 Edw. VII, c. 16, s. 5, *infra*.

b) For time

In respect of every full sum of 100 L., and also any fractional part of 100 L. thereby insured

Where the insurance shall be made for any time not exceeding six months 0 0 3

Where the insurance shall made for any time exceeding six months and not

exceeding twelve months 0 0 6

PROTEST of any bill of exchange or promissory note:

Where the duty on the bill or note does not exceed 1s. { The same duty as the bill or note.

In any other case 0 1 0

WARRANT FOR GOODS 0 0 3

Exemptions.

1. Any document or writing given by an inland carrier acknowledging the receipt of goods conveyed by such carrier.
2. A weight note issued together with a duly stamped warrant, and relating solely to the same goods, wares, or merchandise.

The Betting and Loans (Infants) Act, 1892.

55 & 56 Vict.

Cap. IV.

Avoiding contract for payment of loan advanced during infancy.

5. If any infant, who has contracted a loan which is void in law, agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement, and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement, or otherwise in relation to the payment of money representing or in respect of such loan, shall, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever.

For the purposes of this section any interest, commission, or other payment in respect of such loan shall be deemed to be a part of such loan.

Application to Scotland.

7. In the application of this Act to Scotland; The word "infant" means and includes any minor or pupil.

The Married Women's Property Act, 1893.

56 & 57 Vict.

Cap. LXIII.

**An Act to amend the Married Women's Property Act, 1882
(5th December 1893).**

Effect of contracts by married women.

1. Every contract hereafter entered into by a married woman, otherwise than as agent,

- a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;
- b) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and
- c) shall also be enforceable by process of law against all property which she may thereafter while discoverd be possessed of or entitled to;

Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating.

6. This Act shall not apply to Scotland.

The Sale of Goods Act, 1893.

56 & 57 Vict.

Cap. LXXI.

**An Act for codifying the Law relating to the Sale of Goods
(20th February 1894).**

Part I. Formation of the Contract.**Contract of Sale.****Sale and agreement to sell.**

1. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.
2. A contract of sale may be absolute or conditional.
3. Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.
4. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Capacity of Parties.**Capacity to buy and sell.**

2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Provided that where necessaries are sold and delivered to an infant, or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract.**Contract of sale, how made.**

3. Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

Provided that nothing in this section shall affect the law relating to corporations.

Contract of sale for ten pounds and upwards.

4. 1. A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.
2. The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.
3. There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.
4. The provisions of this section do not apply to Scotland.

Subject matter of Contract.

Existing or future goods.

5. 1. The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods".
2. There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.
3. Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods which have perished.

6. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

Goods perishing before sale but after agreement to sell.

7. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

Ascertainment of price.

8. 1. The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.
2. Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation.

9. 1. Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided; provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.
2. Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties.

Stipulations as to time.

10. 1. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.
2. In a contract of sale "month" means *primâ facie* calendar month.

When condition to be treated as warranty.

11. 1. In England or Ireland—
 - a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated;
 - b) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract;
 - c) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the

property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect.

2. In Scotland, failure by the seller to perform any material part of a contract of sale is a breach of contract, which entitles the buyer either within a reasonable time after delivery to reject the goods and treat the contract as repudiated, or to retain the goods and treat the failure to perform such material part as a breach which may give rise to a claim for compensation or damages.
3. Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, &c.

12. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

1. An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass.
2. An implied warranty that the buyer shall have and enjoy quiet possession of the goods.
3. An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

13. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied conditions as to quality or fitness.

14. Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.
2. Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.
3. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by Sample.

Sale by sample.

15. 1. A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.
2. In the case of a contract for sale by sample—
 - a) There is an implied condition that the bulk shall correspond with the sample in quality;
 - b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

- c) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Part II. Effects of the Contract.

Transfer of Property as between Seller and Buyer.

Goods must be ascertained.

16. Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

17. 1. Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
2. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Rules for ascertaining intention.

18. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1. Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.

Rule 3. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof.

Rule 4. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms the property therein passes to the buyer:—

- a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- b) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5. 1. Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

2. Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee [or custodian] (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Reservation of right of disposal.

19. 1. Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery

of the goods to the buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

2. Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.
3. Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk *prima facie* passes with property.

20. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee [or custodian] of the goods of the other party.

Transfer of Title.

Sale by person not the owner.

21. 1. Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.
2. Provided also that nothing in this Act shall affect—
 - a) The provisions of the Factors Acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;
 - b) The validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Market overt.

22. 1. Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.
2. Nothing in this section shall affect the law relating to the sale of horses.
3. The provisions of this section do not apply to Scotland.

Sale under voidable title.

23. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Revesting of property in stolen goods on conviction of offender.

24. 1. Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise.
2. Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revert in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.
3. The provisions of this section do not apply to Scotland.

Seller or buyer in possession after sale.

25. 1. Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.
2. Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
3. In this section the term "mercantile agent" has the same meaning as in the Factors Acts.

Effect of writs of execution.

26. 1. A writ of fieri facias or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when he received the same.
- Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.
2. In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution.
3. The provisions of this section do not apply to Scotland.

Part III. Performance of the Contract.**Duties of seller and buyer.**

27. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

28. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price; and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Rules as to delivery.

29. 1. Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence: Provided that, if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.
2. Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
3. Where the goods at the time of sale are in the possession of a third person, is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf; provided that

nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

4. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.
5. Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of wrong quantity.

30. 1. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.
2. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.
3. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.
4. The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

Instalment deliveries.

31. 1. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.
2. Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Delivery to carrier.

32. 1. Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.
2. Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.
3. Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place.

33. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

34. 1. Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.
2. Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity

of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

35. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

36. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

37. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Part IV. Rights of Unpaid Seller against the Goods.

Unpaid seller defined.

38. 1. The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—
- a) When the whole of the price has not been paid or tendered;
 - b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.
2. In this part of this Act the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

39. 1. Subject to the provisions of this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—
- a) A lien on the goods or right to retain them for the price while he is in possession of them;
 - b) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;
 - c) A right of re-sale as limited by this Act.
2. Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

Attachment by seller in Scotland.

40. In Scotland a seller of goods may attach the same while in his own hands or possession by arrestment or pouding; and such arrestment or pouding shall have the same operation and effect in a competition or otherwise as an arrestment or pouding by a third party.

Unpaid Seller's Lien.

Seller's lien.

41. 1. Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

- a) Where the goods have been sold without any stipulation as to credit;
 - b) Where the goods have been sold on credit, but the term of credit has expired;
 - e) Where the buyer becomes insolvent.
2. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodian for the buyer.

Part delivery.

42. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

Termination of lien.

43. 1. The unpaid seller of goods loses his lien or right of retention thereon—
- a) When he delivers the goods to a carrier or other bailee or custodian for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
 - b) When the buyer or his agent lawfully obtains possession of the goods;
 - e) By waiver thereof.
2. The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

Stoppage in transitu.

Right of stoppage in transitu.

44. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

Duration of transit.

45. 1. Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee or custodian for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee or custodian.
2. If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.
3. If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodian acknowledges to the buyer or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodian for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
4. If the goods are rejected by the buyer, and the carrier or other bailee or custodian continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.
5. When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.
6. Where the carrier or other bailee or custodian wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.
7. Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transitu is effected.

46. 1. The unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodian in whose possession the goods are.

Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

2. When notice of stoppage in transitu is given by the seller to the carrier, or other bailee or custodian in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale by Buyer or Seller.

Effect of sub-sale or pledge by buyer.

47. Subject to the provisions of this Act, the unpaid seller's right of lien or retention or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transitu is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transitu can only be exercised subject to the rights of the transferee.

Sale not generally rescinded by lien or stoppage in transitu.

48. 1. Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transitu.
2. Where an unpaid seller who has exercised his right of lien or retention or stoppage in transitu re-sells the goods, the buyer acquires a good title thereto as against the original buyer.
3. Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.
4. Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

Part V. Actions for Breach of the Contract.

Remedies of the Seller.

Action for price.

49. 1. Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.
2. Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.
3. Nothing in this section shall prejudice the right of the seller in Scotland to recover interest on the price from the date of tender of the goods, or from the date on which the price was payable, as the case may be.

Damages for non-acceptance.

50. 1. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

2. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.
3. Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

Remedies of the Buyer.

Damages for non-delivery.

51. 1. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.
2. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.
3. Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific performance.

52. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

The provisions of this section shall be deemed to be supplementary to, and not in derogation of, the right of specific implement in Scotland.

Remedy for breach of warranty.

53. 1. Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may
 - a) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - b) maintain an action against the seller for damages for the breach of warranty.
2. The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
3. In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.
4. The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.
5. Nothing in this section shall prejudice or affect the buyer's right of rejection in Scotland as declared by this Act.

Interest and special damages.

54. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

Part VI. Supplementary.

Exclusion of implied terms and conditions.

55. Where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

Reasonable time a question of fact.

56. Where, by this Act, any reference is made to a reasonable time the question what is a reasonable time is a question of fact.

Rights &c. enforceable by action.

57. Where any right, duty, or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

Auction sales.

58. In the case of a sale by auction

1. Where goods are put up for sale by auction in lots, each lot is *primâ facie* deemed to be the subject of a separate contract of sale;
2. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid.
3. Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person: Any sale contravening this rule may be treated as fraudulent by the buyer.
4. A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

Payment into court in Scotland when breach of warranty alleged.

59. In Scotland where a buyer has elected to accept goods which he might have rejected and to treat a breach of contract as only giving rise to a claim for damages, he may, in an action by the seller for the price, be required, in the discretion of the court before which the action depends, to consign or pay into court the price of the goods, or part thereof, or to give other reasonable security for the due payment thereof.

60. (*Repealed, S. L. R. Act, 1908.*)

Savings.

61. 1. The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained.
2. The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.
3. Nothing in this Act or in any repeal effected thereby shall affect the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly repealed by this Act.
4. The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.
5. Nothing in this Act shall prejudice of affect the landlord's right of hypothec or sequestration for rent in Scotland.

Interpretation of terms.

62. 1. In this Act, unless the context or subject matter otherwise requires, "Action" includes counterclaim and set-off, and in Scotland condescendence and claim and compensation.

“Bailee” in Scotland includes custodian.

“Buyer” means a person who buys or agrees to buy goods.

“Contract of sale” includes an agreement to sell as well as a sale.

“Defendant” includes in Scotland defender, respondent, and claimant in a multiplepinding.

“Delivery” means voluntary transfer of possession from one person to another.

“Document of title to goods” has the same meaning as it has in the Factors Acts.

52 & 53 Vict. c. 45. 53 & 54 Vict. c. 40.

“Factors Acts” mean the Factors Act, 1889, the Factors (Scotland) Act, 1890, and any enactment amending or substituted for the same.

“Fault” means wrongful act or default.

“Future goods” mean goods to be manufactured or acquired by the seller after the making of the contract of sale.

“Goods” include all chattels personal other than things in action and money, and in Scotland all corporeal moveables except money. The term also includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

“Lien” in Scotland includes right of retention.

“Plaintiff” includes pursuer, complainer, claimant in a multiplepinding and defendant or defender counterclaiming.

“Property” means the general property in goods, and not merely a special property.

“Quality of goods” includes their state or condition.

“Sale” includes a bargain and sale as well as a sale and delivery.

“Seller” means a person who sells or agrees to sell goods.

“Specific goods” mean goods identified and agreed upon at the time a contract of sale is made.

“Warranty” as regards England and Ireland means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

As regards Scotland a breach of warranty shall be deemed to be a failure to perform a material part of the contract.

2. A thing is deemed to be done “in good faith” within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.
3. A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he has become a notour bankrupt or not.
4. Goods are in a “deliverable state” within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

63. (*Repealed, S. L. R. Act, 1908.*)

Short title.

64. This Act may be cited as the Sale of Goods Act, 1893.

Merchant Shipping Act, 1894.

57 & 58 Vict.

Cap. LX.

An Act to consolidate Enactments relating to Merchant Shipping
(25th August 1894).

Part I. Registry.

Qualification for owning British Ships.

Qualification for owning British ship.

1. A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships), namely:

- a) Natural-born British subjects;
- b) Persons naturalized by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession;
- c) Persons made denizens by letters of denization; and
- d) Bodies corporate established under and subject to the laws of some part of Her Majesty's dominions, and having their principal place of business in those dominions;

Provided that any person who either:

1. being a natural-born British subject has taken the oath of allegiance to a foreign sovereign or state or has otherwise become a citizen or subject of a foreign state; or

2. has been naturalized or made a denizen as aforesaid;

shall not be qualified to be owner of a British ship unless, after taking the said oath, or becoming a citizen or subject of a foreign State, or on or after being naturalized or made denizen as aforesaid, he has taken the oath of allegiance to Her Majesty the Queen, and is during the time he is owner of the ship either resident in Her Majesty's dominions, or partner in a firm actually carrying on business in Her Majesty's dominions.

Obligation to register British Ships.

Obligation to register British Ships.

2. 1. Every British ship shall, unless exempted from registry, be registered under this Act.
2. If a ship required by this Act to be registered is not registered under this Act she shall not be recognised as a British ship.
3. A ship required by this Act to be registered may be detained until the master of the ship, if so required, produces the certificate of the registry of the ship.

Exemptions from registry.

3. The following ships are exempted from registry under this Act:—

1. Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of the ships are resident.
2. Ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of Saint Lawrence, or on such portions of the coasts of Canada as lie bordering on that gulf.

Procedure for Registration.

Registrars of British ships.

4. 1. The following persons shall be registrars of British ships:—

- a) At any port in the United Kingdom, or Isle of Man, approved by the Commissioners of Customs for the registry of ships, the chief officer of customs;

- b) In Guernsey and Jersey, the chief officers of customs together with the governor;
 - c) In Malta and Gibraltar, the governor;
 - d) At Calcutta, Madras, and Bombay, the port officer;
 - e) At any other port in any British possession approved by the governor of the possession for the registry of ships, the chief officer of customs, or, if there is no such officer there resident, the governor of the possession in which the port is situate, or any officer appointed for the purpose by the governor;
 - f) At a port of registry established by Order in Council under this Act, persons of the description in that behalf declared by the Order.
2. Notwithstanding anything in this section Her Majesty may by Order in Council declare, with respect to any British possession named in the Order, not being the Channel Islands or the Isle of Man, the description of persons who are to be registrars of British ships in that possession.
 3. A registrar shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of registrar, unless the same has happened through his neglect or wilful act.

Register book.

5. Every registrar of British ships shall keep a book to be called the register book, and entries in that book shall be made in accordance with the following provisions:

1. The property in a ship shall be divided into sixty-four shares.
2. Subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner.
3. A person shall not be entitled to be registered as owner of a fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein.
4. Joint owners shall be considered as constituting one person only as regards the persons entitled to be registered, and shall not be entitled to dispose in severalty of any interest in a ship, or in any share therein in respect of which they are registered.
5. A corporation may be registered as owner by its corporate name.

Survey and measurement of ship.

6. Every British ship shall before registry be surveyed by a surveyor of ships and her tonnage ascertained in accordance with the tonnage regulations of this Act, and the surveyor shall grant his certificate specifying the ship's tonnage and build, and such other particulars descriptive of the identity of the ship as may for the time being be required by the Board of Trade, and such certificate shall be delivered to the registrar before registry.

7. Marking of ship.

Application for registry.

8. An application for registry of a ship shall be made in the case of individuals by the person requiring to be registered as owner, or by some one or more of the persons so requiring if more than one, or by his or their agent, and in the case of corporations by their agent, and the authority of the agent shall be testified by writing, if appointed by individuals, under the hands of the appointors, and, if appointed by a corporation, under the common seal of that corporation.

Declaration of ownership on registry.

9. A person shall not be entitled to be registered as owner of a ship or of a share therein until he, or in the case of a corporation the person authorised by this Act to make declarations on behalf of the corporation, has made and signed a declaration of ownership, referring to the ship as described in the certificate of the surveyor, and containing the following particulars:—

1. A statement of his qualification to own a British ship, or in the case of a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a British ship.
2. A statement of the time when and the place where the ship was built, or, if the ship is foreign built, and the time and place of building unknown, a statement that she is foreign built, and that the declarant does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or, in the case of a ship condemned, a statement of the time place and court at and by which she was condemned.
3. A statement of the name of the master.
4. A statement of the number of shares in the ship of which he or the corporation, as the case may be, is entitled to be registered as owner.
5. A declaration that, to the best of his knowledge and belief, no unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share therein.

Evidence on first registry.

- 10.** 1. On the first registry of a ship the following evidence shall be produced in addition to the declaration of ownership:—
- a) In the case of a British-built ship, a builder's certificate, that is to say, a certificate signed by the builder of the ship, and containing a true account of the proper denomination and of the tonnage of the ship, as estimated by him, and of the time when and the place where she was built, and of the name of the person (if any) on whose account the ship was built, and if there has been any sale, the bill of sale under which the ship, or a share therein, has become vested in the applicant for registry;
 - b) In the case of a foreign-built ship, the same evidence as in the case of a British-built ship, unless the declarant who makes the declaration of ownership declares that the time and place of her building are unknown to him, or that the builder's certificate cannot be procured, in which case there shall be required only the bill of sale under which the ship, or a share therein, became vested in the applicant for registry;
 - c) In the case of a ship condemned by any competent court, an official copy of the condemnation.
2. The builder shall grant the certificate required by this section, and such person as the Commissioners of Customs recognise as carrying on the business of the builder of a ship, shall be included, for the purposes of this section, in the expression "builder of the ship."
3. If the person granting a builder's certificate under this section wilfully makes a false statement in that certificate he shall for each offence be liable to a fine not exceeding one hundred pounds.

Entry of particulars in register book.

11. As soon as the requirements of this Act preliminary to registry have been complied with the registrar shall enter in the register book the following particulars respecting the ship:—

- a) The name of the ship and the name of the port to which she belongs;
- b) The details comprised in the surveyor's certificate;
- c) The particulars respecting her origin stated in the declaration of ownership; and
- d) The name and description of her registered owner or owners, and if there are more owners than one, the proportions in which they are interested in her.

Documents to be retained by registrar.

12. On the registry of a ship the registrar shall retain in his possession the following documents; namely, the surveyor's certificate, the builder's certificate, any bill of sale of the ship previously made, the copy of the condemnation (if any), and all declarations of ownership.

Port of registry.

13. The port at which a British ship is registered for the time being shall be deemed her port of registry and the port to which she belongs.

Certificate of Registry.

Certificate of registry.

14. On completion of the registry of a ship, the registrar shall grant a certificate of registry comprising the particulars respecting her entered in the register book, with the name of her master.

Custody of certificate.

15. 1. The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest whatever had or claimed by any owner, mortgagee, or other person to, on, or in the ship.
2. If any person, whether interested in the ship or not, refuses on request to deliver up the certificate of registry when in his possession or under his control to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship, or to any registrar, officer of customs, or other person entitled by law to require such delivery, any justice by warrant under his hand and seal, or any court capable of taking cognizance of the matter, may summon the person so refusing to appear before such justice or court, and to be examined touching such refusal, and unless it is proved to the satisfaction of such justice or court that there was reasonable cause for such refusal, the offender shall be liable to a fine not exceeding one hundred pounds, but if it is shown to such justice or court that the certificate is lost, the person summoned shall be discharged, and the justice or court shall certify that the certificate of registry is lost.
3. If the person so refusing is proved to have absconded so that the warrant of a justice or process of a court cannot be served on him, or if he persists in not delivering up the certificate, the justice or court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate mislaid, lost, or destroyed, or as near thereto as circumstances permit.

Penalty for use of improper certificate.

16. If the master or owner of a ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he shall, in respect of each offence, be guilty of a misdemeanor, and the ship shall be subject to forfeiture under this Act.

Power to grant new certificate.

17. The registrar of the port of registry of a ship may, with the approval of the Commissioners of Customs, and on the delivery up to him of the certificate of registry of a ship, grant a new certificate in lieu thereof.

Provision for loss of certificate.

18. 1. In the event of the certificate of registry of a ship being mislaid, lost, or destroyed, the registrar of her port of registry shall grant a new certificate of registry in lieu of her original certificate.
2. If the port (having a British registrar or consular officer) at which the ship is at the time of the event, or first arrives after the event —
- a) Is not in the United Kingdom, where the ship is registered in the United Kingdom; or,
 - b) Is not in the British possession in which the ship is registered; or,
 - c) Where the ship is registered at a port of registry established by Order in Council under this Act, is not that port;
- then the master of the ship, or some other person having knowledge of the facts of the case, shall make a declaration stating the facts of the case, and the names and descriptions of the registered owners of such ship to the best of the declarant's knowledge and belief, and the registrar or consular officer, as the case may be, shall thereupon grant a provisional certificate, containing a statement of the circumstances under which it is granted.
3. The provisional certificate shall within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, where she is registered in the United Kingdom, or in the British possession in which she is registered, or where she is registered at a port of registry established

by Order in Council under this Act at that port, be delivered up to the registrar of her port of registry, and the registrar shall thereupon grant the new certificate of registry; and if the master without reasonable cause fails to deliver up the provisional certificate within the ten days aforesaid, he shall be liable to a fine not exceeding fifty pounds.

Endorsement of change of master on certificate.

19. Where the master of a registered British ship is changed, each of the following persons, that is to say—

- a) If the change is made in consequence of the sentence of a naval court, the presiding officer of that court; and
- b) If the change is made in consequence of the removal of the master by a court under Part VI. of this Act, the proper officer of that court; and
- c) If the change occurs from any other cause, the registrar, or if there is none the British consular officer, at the port where the change occurs,

shall endorse and sign on the certificate of registry a memorandum of the change, and shall forthwith report the change to the Registrar-General of Shipping and Seamen; and any officer of customs at any port in Her Majesty's dominions may refuse to admit any person to do any act there as master of a British ship unless his name is inserted in or endorsed on her certificate of registry as her last appointed master.

Endorsement of change of ownership on certificate.

20. 1. Whenever a change occurs in the registered ownership of a ship, the change of ownership shall be endorsed on her certificate of registry either by the registrar of the ship's port of registry, or by the registrar of any port at which the ship arrives who has been advised of the change by the registrar of the ship's port of registry.
2. The master shall, for the purpose of such endorsement by the registrar of the ship's port of registry, deliver the certificate of registry to the registrar, forthwith after the change if the change occurs when the ship is at her port of registry, and if it occurs during her absence from that port and the endorsement under this section is not made before her return then upon her first return to that port.
3. The registrar of any port, not being the ship's port of registry, who is required to make an endorsement under this section may for that purpose require the master of the ship to deliver to him the ship's certificate of registry, so that the ship be not thereby detained, and the master shall deliver the same accordingly.
4. If the master fails to deliver to the registrar the certificate of registry as required by this section he shall, for each offence, be liable to a fine not exceeding one hundred pounds.

Delivery up of certificate of ship lost or ceasing to be British-owned.

21. 1. In the event of a registered ship being either actually or constructively lost, taken by the enemy, burnt, or broken up, or ceasing by reason of a transfer to persons not qualified to be owners of British ships, or otherwise, to be a British ship, every owner of the ship or any share in the ship shall, immediately on obtaining knowledge of the event, if no notice thereof has already been given to the registrar, give notice thereof to the registrar at her port of registry, and that registrar shall make an entry thereof in the register book.
2. In any such case, except where the ship's certificate of registry is lost or destroyed, the master of the ship shall, if the event occurs in port immediately, but if it occurs elsewhere then within ten days after his arrival in port, deliver the certificate to the registrar, or, if there is none, to the British consular officer there, and the registrar, if he is not himself the registrar of her port of registry, or the British consular officer, shall forthwith forward the certificate delivered to him to the registrar of her port of registry.
3. If any such owner or master fails, without reasonable cause, to comply with this section, he shall for each offence be liable to a fine not exceeding one hundred pounds.

Provisional certificate for ships becoming British-owned abroad.

22. 1. If at a port not within Her Majesty's dominions and not being a port of registry established by Order in Council under this Act, a ship becomes the property of persons qualified to own a British ship, the British consular officer there may grant to her master, on his application, a provisional certificate, stating:
- a) The name of the ship;
 - b) The time and place of her purchase, and the names of her purchasers;
 - c) The name of her master; and
 - d) The best particulars respecting her tonnage, build, and description which he is able to obtain;
- and shall forward a copy of the certificate at the first convenient opportunity to the Registrar-General of Shipping and Seamen.
2. Such a provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date, or until the ship's arrival at a port where there is a registrar (whichever first happens), and on either of those events happening shall cease to have effect.

Temporary passes in lieu of certificates of registry.

23. Where it appears to the Commissioners of Customs, or to the governor of a British possession, that by reason of special circumstances it would be desirable that permission should be granted to any British ship to pass, without being previously registered, from any port in Her Majesty's dominions to any other port within Her Majesty's dominions, the Commissioners or the governor may grant a pass accordingly, and that pass shall, for the time and within the limits therein mentioned, have the same effect as a certificate of registry.

Transfers and Transmissions.

Transfer of ships or shares.

24. 1. A registered ship or a share therein (when disposed of to a person qualified to own a British ship) shall be transferred by bill of sale.
2. The bill of sale shall contain such description of the ship as is contained in the surveyor's certificate, or some other description sufficient to identify the ship to the satisfaction of the registrar, and shall be in the form marked A in the first part of the First Schedule to this Act, or as near thereto as circumstances permit, and shall be executed by the transferor in the presence of and be attested by, a witness or witnesses.

Declaration of transfer.

25. Where a registered ship or a share therein is transferred, the transferee shall not be entitled to be registered as owner thereof until he, or, in the case of a corporation, the person authorised by this Act to make declarations on behalf of the corporation, has made and signed a declaration (in this Act called a declaration of transfer) referring to the ship, and containing—

- a) A statement of the qualification of the transferee to own a British ship, or if the transferee is a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a British ship; and
- b) A declaration that, to the best of his knowledge and belief, no unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share therein.

Registry of transfer.

26. 1. Every bill of sale for the transfer of a registered ship or of a share therein, when duly executed, shall be produced to the registrar of her port of registry, with the declaration of transfer, and the registrar shall thereupon enter in the register book the name of the transferee as owner of the ship or share, and shall endorse on the bill of sale the fact of that entry having been made, with the day and hour thereof.
2. Bills of sale of a ship or of a share therein shall be entered in the register book in the order of their production to the registrar.

Transmission of property in ship on death, bankruptcy, marriage, &c.

27. 1. Where the property in a registered ship or share therein is transmitted to a person qualified to own a British ship on the marriage, death, or bankruptcy of any registered owner, or by any lawful means other than by a transfer under this Act:—
- a) That person shall authenticate the transmission by making and signing a declaration (in this Act called a declaration of transmission) identifying the ship and containing the several statements herein-before required to be contained in a declaration of transfer, or as near thereto as circumstances admit, and also a statement of the manner in which and the person to whom the property has been transmitted;
 - b) If the transmission takes place by virtue of marriage, the declaration shall be accompanied by a copy of the register of the marriage or other legal evidence of the celebration thereof, and shall declare the identity of the female owner;
 - c) If the transmission is consequent on bankruptcy, the declaration of transmission shall be accompanied by such evidence as is for the time being receivable in courts of justice as proof of the title of persons claiming under a bankruptcy;
 - d) If the transmission is consequent on death, the declaration of transmission shall be accompanied by the instrument of representation, or an official extract therefrom.
2. The registrar, on receipt of the declaration of transmission so accompanied, shall enter in the register book the name of the person entitled under the transmission as owner of the ship or share the property in which has been transmitted, and, where there is more than one such person, shall enter the names of all those persons, but those persons, however numerous, shall, for the purpose of the provision of this Act with respect to the number of persons entitled to be registered as owners, be considered as one person.

Order for sale on transmission to unqualified person.

28. 1. Where the property in a registered ship or share therein is transmitted on marriage, death, bankruptcy, or otherwise to a person not qualified to own a British ship, then—
- if the ship is registered in England or Ireland, the High Court; or
 - if the ship is registered in Scotland, the Court of Session; or
 - if the ship is registered in any British possession, the court having the principal civil jurisdiction in that possession; or
 - if the ship is registered in a port of registry established by Order in Council under this Act, the British court having the principal civil jurisdiction there;
- may on application by or on behalf of the unqualified person, order a sale of the property so transmitted, and direct that the proceeds of the sale, after deducting the expenses thereof, be paid to the person entitled under such transmission or otherwise as the court direct.
2. The court may require any evidence in support of the application they think requisite, and may make the order on any terms and conditions they think just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.
 3. Every such application for sale must be made within four weeks after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) as the court allow.
 4. If such an application is not made within the time aforesaid, or if the court refuse an order for sale, the ship or share transmitted shall thereupon be subject to forfeiture under this Act.

Transfer of ship or sale by order of court.

29. Where any court, whether under the preceding sections of this Act or otherwise, order the sale of any ship or share therein, the order of the court shall contain a declaration vesting in some person named by the court the right to transfer that ship or share, and that person shall thereupon be entitled to transfer the ship

or share in the same manner and to the same extent as if he were the registered owner thereof; and every registrar shall obey the requisition of the person so named in respect of any such transfer to the same extent as if such person were the registered owner.

Power of court to prohibit transfer.

30. Each of the following courts, namely:—

- a) In England or Ireland the High Court;
- b) In Scotland the Court of Session;
- c) In any British possession the court having the principal civil jurisdiction in that possession; and
- d) In the case of a port of registry established by Order in Council under this

Act, the British court having the principal civil jurisdiction there, may, if the court think fit (without prejudice to the exercise of any other power of the court), on the application of any interested person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the court may make the order on any terms or conditions they think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires; and every registrar, without being made a party to the proceeding, shall on being served with the order or an official copy thereof obey the same.

Mortgages.

Mortgage of ship or share.

31. 1. A registered ship or a share therein may be made a security for a loan or other valuable consideration, and the instrument creating the security (in this Act called a mortgage) shall be in the form marked B in the first part of the First Schedule to this Act, or as near thereto as circumstances permit, and on the production of such instrument the registrar of the ship's port of registry shall record it in the register book.
2. Mortgages shall be recorded by the registrar in the order in time in which they are produced to him for that purpose, and the registrar shall by memorandum under his hand notify on each mortgage that it has been recorded by him, stating the day and hour of that record.

Entry of discharge of mortgage.

32. Where a registered mortgage is discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged, and on that entry being made the estate (if any) which passed to the mortgagee shall vest in the person in whom (having regard to intervening acts and circumstances, if any), it would have vested if the mortgage had not been made.

Priority of mortgages.

33. If there are more mortgages than one registered in respect of the same ship or share, the mortgagees shall, notwithstanding any express, implied, or constructive notice, be entitled in priority, one over the other, according to the date at which each mortgage is recorded in the register book, and not according to the date of each mortgage itself.

Mortgagee not treated as owner.

34. Except as far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be deemed the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.

Mortgagee to have power of sale.

35. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but where there are more persons than one registered as mortgagees of the same ship or share, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, sell the ship or share, without the concurrence of every prior mortgagee.

Mortgage not affected by bankruptcy.

36. A registered mortgage of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the ship or share in his possession, order, or disposition, or was reputed owner thereof, and the mortgage shall be preferred to any right, claim, or interest therein of the other creditors of the bankrupt or any trustee or assignee on their behalf.

Transfer of mortgages.

37. A registered mortgage of a ship or share may be transferred to any person, and the instrument effecting the transfer shall be in the form marked C in the first part of the First Schedule to this Act, or as near thereto as circumstances permit, and on the production of such instrument the registrar shall record it by entering in the register book the name of the transferee as mortgagee of the ship or share, and shall by memorandum under his hand notify on the instrument of transfer that it has been recorded by him, stating the day and hour of the record.

Transmission of interest in mortgage by death, bankruptcy, marriage, &c.

38. 1. Where the interest of a mortgagee in a ship or share is transmitted on marriage, death, or bankruptcy, or by any lawful means, other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted, containing a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by the like evidence as is by this Act required in case of a corresponding transmission of the ownership of a ship or share.
2. The registrar on the receipt of the declaration, and the production of the evidence aforesaid, shall enter the name of the person entitled under the transmission in the register book as mortgagee of the ship or share.

Certificates of Mortgage and Sale.**Powers of mortgage and sale may be conferred by certificate.**

39. A registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered at any place out of the country in which the port of registry of the ship is situate, may apply to the registrar, and the registrar shall thereupon enable him to do so by granting a certificate of mortgage or a certificate of sale.

Requisites for certificates of mortgage and sale.

40. Before a certificate of mortgage or sale is granted, the applicant shall state to the registrar, and the registrar shall enter in the register book, the following particulars (that is to say):

1. The name of the person by whom the power mentioned in the certificate is to be exercised, and in the case of a mortgage the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale the minimum price at which a sale is to be made, if it is intended to fix any such minimum.
2. The place where the power is to be exercised, or if no place is specified, a declaration that it may be exercised anywhere, subject to the provisions of this Act.
3. The limit of time within which the power may be exercised.

Restrictions on certificates of mortgage and sale.

41. A certificate of mortgage or sale shall not be granted so as to authorise any mortgage or sale to be made—

- if the port of registry of the ship is situate in the United Kingdom, at any place within the United Kingdom; or
- if the port of registry is situate within a British possession, at any place within the same British possession; or
- if the port of registry is established by Order in Council under this Act, at that port, or within such adjoining area as is specified in the order; or
- by any person not named in the certificate.

Contents of certificates of mortgage and sale.

42. A certificate of mortgage and a certificate of sale shall contain a statement of the several particulars by this Act directed to be entered in the register book on the application for the certificate, and in addition thereto an enumeration of any registered mortgages or certificates of mortgage or sale affecting the ship or share in respect of which the certificate is given.

Rules as to certificates of mortgage.

43. The following rules shall be observed as to certificates of mortgage:—

1. The power shall be exercised in conformity with the directions contained in the certificate.
2. Every mortgage made thereunder shall be registered by the endorsement of a record thereof on the certificate by a registrar or British consular officer.
3. A mortgage made in good faith thereunder shall not be impeached by reason of the person by whom the power was given dying before the making of the mortgage.
4. Whenever the certificate contains a specification of the place at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, a mortgage made in good faith to a mortgagee without notice shall not be impeached by reason of the bankruptcy of the person by whom the power was given.
5. Every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book; and, if there are more mortgages than one so registered, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled one before the other according to the date at which each mortgage is registered on the certificate, and not according to the date of the mortgage.
6. Subject to the foregoing rules, every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate.
7. The discharge of any mortgage so registered on the certificate may be endorsed on the certificate by any registrar or British consular officer, on the production of such evidence as is by this Act required to be produced to the registrar on the entry of the discharge of a mortgage in the register book; and on that endorsement being made, the interest, if any, which passed to the mortgagee shall vest in the same person or persons in whom it would (having regard to intervening acts and circumstances, if any,) have vested, if the mortgage had not been made.
8. On the delivery of any certificate of mortgage to the registrar by whom it was granted he shall, after recording in the register book, in such manner as to preserve its priority, any unsatisfied mortgage registered thereon, cancel the certificate, and enter the fact of the cancellation in the register book; and every certificate so cancelled shall be void to all intents.

Rules as to certificates of sale.

44. The following rules shall be observed as to certificates of sale:—

1. A certificate of sale shall not be granted except for the sale of an entire ship.
2. The power shall be exercised in conformity with the directions contained in the certificate.
3. A sale made in good faith thereunder to a purchaser for valuable consideration shall not be impeached by reason of the person by whom the power was given dying before the making of such sale.
4. Whenever the certificate contains a specification of the place at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, a sale made in good faith to a purchaser for valuable consideration without notice shall not be impeached by reason of the bankruptcy of the person by whom the power was given.
5. A transfer made to a person qualified to be the owner of a British ship shall be by a bill of sale in accordance with this Act.

6. If the ship is sold to a person qualified to be the owner of a British ship the ship shall be registered anew; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book.
7. Before registry anew there shall be produced to the registrar required to make the same the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of such ship.
8. The last-mentioned registrar shall retain the certificates of sale and registry, and after having endorsed on both of those instruments an entry of the fact of a sale having taken place, shall forward them to the registrar of the port appearing thereon to be the former port of registry of the ship, and the last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in that book shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein.
9. On such registry anew the description of the ship contained in her original certificate of registry may be transferred to the new register book, without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee.
10. If the ship is sold to a person not qualified to be the owner of a British ship, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry shall be produced to a registrar or British consular officer, and that registrar or officer shall retain the certificates of sale and registry, and, having endorsed thereon the fact of that ship having been sold to a person not qualified to be the owner of a British ship, shall forward the certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of that ship; and that registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in that book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein.
11. If, on a sale being made to a person not qualified to be the owner of a British ship, default is made in the production of such certificates as are mentioned in the last rule, that person shall be considered by British law as having acquired no title to or interest in the ship; and further, the person upon whose application the certificate of sale was granted, and the person exercising the power, shall each be liable to a fine not exceeding one hundred pounds.
12. If no sale is made in conformity with the certificate of sale, that certificate shall be delivered to the registrar by whom the same was granted; and he shall thereupon cancel it and enter the fact of the cancellation in the register book; and every certificate so cancelled shall be void for all intents and purposes.

Power of Commissioners of Customs in case of loss of certificate of mortgage or sale.

45. On proof at any time to the satisfaction of the Commissioners of Customs that a certificate of mortgage or sale is lost or destroyed, or so obliterated as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised, then on proof of the several matters and things that have been done thereunder, the registrar may, with the sanction of the Commissioners, as circumstances require, either issue a new certificate, or direct such entries to be made in the register books, or such other things to be done, as might have been made or done if the loss, destruction, or obliteration had not taken place.

Revocation of certificates of mortgage and sale.

46. 1. The registered owner of any ship or share therein in respect of which a certificate of mortgage or sale has been granted, specifying the places where the power thereby given is to be exercised, may, by an instrument under his hand, authorise the registrar by whom the certificate was granted to give notice to the registrar or British consular officer at every such place that the certificate is revoked.
2. Notice shall thereupon be given accordingly and shall be recorded by the registrar or British consular officer receiving it, and after it is recorded

the certificate shall be deemed to be revoked and of no effect so far as respects any mortgage or sale to be thereafter made at that place.

3. The notice after it has been recorded shall be exhibited to every person applying for the purpose of effecting or obtaining a mortgage or transfer under the certificate.
4. A registrar or British consular officer on recording any such notice shall state to the registrar by whom the certificate was granted whether any previous exercise of the power to which such certificate refers has taken place.

Name of Ship.

Rules as to name of ship.

47. 1. A ship shall not be described by any name other than that by which she is for the time being registered.
2. A change shall not be made in the name of a ship without the previous written permission of the Board of Trade.
3. Application for that permission shall be in writing, and if the Board are of opinion that the application is reasonable they may entertain it, and thereupon require notice thereof to be published in such form and manner as they think fit.
4. On permission being granted to change the name, the ship's name shall forthwith be altered in the register book, in the ship's certificate of registry, and on her bows and stern.
5. If it is shown to the satisfaction of the Board of Trade that the name of any ship has been changed without their permission they shall direct that her name be altered into that which she bore before the change, and the name shall be altered in the register book, in the ship's certificate of registry, and on her bows and stern accordingly.
6. Where a ship having once been registered has ceased to be so registered no person unless ignorant of the previous registry (proof whereof shall lie on him) shall apply to register, and no registrar shall knowingly register, the ship, except by the name by which she was previously registered, unless with the previous written permission of the Board of Trade.
7. Where a foreign ship, not having at any previous time been registered as a British ship, becomes a British ship, no person shall apply to register, and no registrar shall knowingly register, the ship, except by the name which she bore as a foreign ship immediately before becoming a British ship, unless with the previous written permission of the Board of Trade.
8. If any person acts, or suffers any person under his control to act, in contravention of this section, or omits to do, or suffers any person under his control to omit to do, anything required by this section, he shall for each offence be liable to a fine not exceeding one hundred pounds, and (except in the case of an application being made under the section with respect to a foreign ship which not having at any previous time been registered as a British ship has become a British ship) the ship may be detained until this section is complied with.

Registry of Alterations, Registry anew, and Transfer of Registry.

Registry of alterations.

48. 1. When a registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register book, then, if the alteration is made at any port having a registrar, that registrar or, if it is made elsewhere, the registrar of the first port having a registrar at which the ship arrives after the alteration, shall, on application being made to him, and on receipt of a certificate from the proper surveyor stating the particulars of the alteration, either cause the alteration to be registered, or direct that the ship be registered anew.
2. *On failure to register anew a ship or to register an alteration of a ship so altered as aforesaid, that ship shall be deemed not duly registered, and shall not be recognised as a British ship.*

(Subsection 2 has been repealed by Merchant Shipping Act 1906, s. 85.)

Regulations for registry of alteration.

49. 1. For the purpose of the registry of an alteration in a ship, the ship's certificate of registry shall be produced to the registrar, and the registrar shall, in his discretion, either retain the certificate of registry and grant a new certificate of registry containing a description of the ship as altered, or endorse and sign on the existing certificate a memorandum of the alteration.
2. The particulars of the alteration so made, and the fact of the new certificate having been granted, or endorsement having been made, shall be entered by the registrar of the ship's port of registry in his register book; and for that purpose the registrar to whom the application for the registry of the alteration has been made (if he is not the registrar of the ship's port of registry), shall forthwith report to the last-mentioned registrar the particulars and facts as aforesaid, accompanied, where a new certificate of registry has been granted, by the old certificate of registry.

Provisional certificate and endorsement where ship is to be registered anew.

50. 1. Where any registrar, not being the registrar of the ship's port of registry, on an application as to an alteration in a ship directs the ship to be registered anew, he shall either grant a provisional certificate, describing the ship as altered, or provisionally endorse the particulars of the alteration on the existing certificate.
2. Every such provisional certificate, or certificate provisionally endorsed, shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if she is registered in the United Kingdom, or, if she is registered in a British possession, at her port of discharge in that British possession, or, if she is registered at a port of registry established by Order in Council under this Act, at that port, be delivered up to the registrar thereof, and that registrar shall cause the ship to be registered anew.
3. The registrar granting a provisional certificate under this section, or provisionally endorsing a certificate, shall add to the certificate or endorsement a statement that the same is made provisionally, and shall send a report of the particulars of the case to the registrar of the ship's port of registry, containing a similar statement as the certificate or endorsement.

Registry anew on change of ownership.

51. Where the ownership of any ship is changed, the registrar of the port at which the ship is registered may, on the application of the owners of the ship, register the ship anew, although registration anew is not required under this Act.

Procedure for registry anew.

52. 1. Where a ship is to be registered anew, the registrar shall proceed as in the case of first registry, and on the delivery up to him of the existing certificate of registry, and on the other requisites to registry, or in the case of a change of ownership such of them as he thinks material, being duly complied with, shall make such registry anew, and grant a certificate thereof.
2. When a ship is registered anew, her former register shall be considered as closed, except so far as relates to any unsatisfied mortgage or existing certificates of sale or mortgage entered thereon, but the names of all persons appearing on the former register to be interested in the ship as owners or mortgagees shall be entered on the new register, and the registry anew shall not in any way affect the rights of any of those persons.

Transfer of registry.

53. 1. The registry of any ship may be transferred from one port to another on the application to the registrar of the existing port of registry of the ship made by declaration in writing of all persons appearing on the register to be interested therein as owners or mortgagees, but that transfer shall not in any way affect the rights of those persons or any of them, and those rights shall in all respects continue in the same manner as if no such transfer had been effected.
2. On any such application the registrar shall transmit notice thereof to the registrar of the intended port of registry with a copy of all particulars relating

to the ship, and the names of all persons appearing on the register to be interested therein as owners or mortgagees.

3. The ship's certificate of registry shall be delivered up to the registrar either of the existing or intended port of registry, and, if delivered up to the former, shall be transmitted to the registrar of the intended port of registry.
4. On the receipt of the above documents the registrar of the intended port of registry shall enter in his register book all the particulars and names so transmitted as aforesaid, and grant a fresh certificate of registry, and thenceforth such ship shall be considered as registered at the new port of registry, and the name of the ship's new port of registry shall be substituted for the name of her former port of registry on the ship's stern.

Restrictions on re-registration of abandoned ships.

54. Where a ship has ceased to be registered as a British ship by reason of having been wrecked or abandoned, or for any reason other than capture by the enemy or transfer to a person not qualified to own a British ship, the ship shall not be re-registered until she has, at the expense of the applicant for registration, been surveyed by a surveyor of ships and certified by him to be seaworthy.

Incapacitated Persons.

Provision for cases of infancy or other incapacity.

55. 1. Where by reason of infancy, lunacy, or any other cause any person interested in any ship, or any share therein, is incapable of making any declaration or doing anything required or permitted by this Act to be made or done in connection with the registry of the ship or share, the guardian or committee, if any, of that person, or, if there is none, any person appointed on application made on behalf of the incapable person, or of any other person interested, by any court or judge having jurisdiction in respect of the property of incapable persons, may make such declaration as nearly corresponding thereto as circumstances permit, and do such act or thing in the name and on behalf of the incapable person; and all acts done by the substitute shall be as effectual as if done by the person for whom he is substituted.
2. The Trustee Act, 1850, and the Acts amending the same, shall, so far as regards the court exercising jurisdiction in lunacy in Ireland, apply to shares in ships registered under this Act as if they were stock as defined by that Act.

Trusts and Equitable Rights.

Notice of trusts not received.

56. No notice of any trust, express, implied, or constructive, shall be entered in the register book or be receivable by the registrar, and, subject to any rights and powers appearing by the register book to be vested in any other person, the registered owner of a ship or of a share therein shall have power absolutely to dispose in manner in this Act provided of the ship or share, and to give effectual receipts for any money paid or advanced by way of consideration.

Equities not excluded by Act.

57. The expression "beneficial interest," where used in this Part of this Act, includes interests arising under contract and other equitable interests; and the intention of this Act is, that without prejudice to the provisions of this Act for preventing notice of trusts from being entered in the register book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees, and without prejudice to the provisions of this Act relating to the exclusion of unqualified persons from the ownership of British ships, interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property.

Liability of Beneficial Owner.

Liability of owners.

58. Where any person is beneficially interested, otherwise than by way of mortgage, in any ship or share in a ship registered in the name of some other person

as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or any other Act on the owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such penalties against both or either of the aforesaid parties, with or without joining the other of them.

Managing Owner.

Ship's managing owner or manager to be registered.

59. 1. The name and address of the managing owner for the time being of every ship registered at a port in the United Kingdom shall be registered at the custom house of that port.
2. Where there is not a managing owner there shall be so registered the name of the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner; and any person whose name is so registered shall, for the purposes of this Act, be under the same obligations, and subject to the same liabilities, as if he were the managing owner.
3. If default is made in complying with this section the owner shall be liable, or if there are more owners than one each owner shall be liable in proportion to his interest in the ship, to a fine not exceeding in the whole one hundred pounds each time the ship leaves any port in the United Kingdom.

Declarations, Inspection of Register, and Fees.

Power of registrar to dispense with declarations and other evidence.

60. When, under this Part of this Act, any person is required to make a declaration on behalf of himself or of any corporation, or any evidence is required to be produced to the registrar, and it is shown to the satisfaction of the registrar that from any reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the registrar may, with the approval of the Commissioners of Customs, and on the production of such other evidence, and subject to such terms as they may think fit, dispense with the declaration or evidence.

Mode of making declarations.

61. 1. Declarations required by this Part of this Act shall be made before a registrar of British ships, or a justice of the peace, or a commissioner for oaths, or a British consular officer.
2. Declarations required by this Part of this Act may be made on behalf of a corporation by the secretary or any other officer of the corporation authorised by them for the purpose.

Application of fees.

62. All fees authorised to be taken under this Part of this Act, shall, except where otherwise in this Act provided, if taken in any part of the United Kingdom, be applied in payment of the general expenses of carrying into effect this Part of this Act, or otherwise as the Treasury may direct; if taken in a British possession, be disposed of in such way as the Executive Government of the possession direct; and if taken at any port of registry established by Order in Council under this Act, be disposed of as Her Majesty in Council directs.

Returns, Evidence, and Forms.

Returns to be made by registrars.

63. 1. Every registrar in the United Kingdom shall at the expiration of every month, and every other registrar at such times as may be fixed by the Registrar-General of Shipping and Seamen, transmit to him a full return, in such form as the said Registrar-General may direct, of all registries, transfers, transmissions, mortgages, and other dealings with ships which have been registered by or communicated to him in his character of registrar, and of the names of the persons concerned in the same, and of such other particulars as may be directed by the said Registrar-General.

2. Every registrar at a port in the United Kingdom shall on or before the first day of February and the first day of August in every year transmit to the Registrar-General of Shipping and Seamen a list of all ships registered at that port, and also of all ships whose registers have been transferred or cancelled at that port since the last preceding return.

Evidence of register book, certificate of registry, and other documents.

64. 1. A person, on payment of a fee not exceeding one shilling, to be fixed by the Commissioners of Customs, may on application to the registrar at a reasonable time during the hours of his official attendance, inspect any register book.
2. The following documents shall be admissible in evidence in manner provided by this Act, namely:—
 - a) Any register book under this Part of this Act on its production from the custody of the registrar or other person having the lawful custody thereof;
 - b) A certificate of registry under this Act purporting to be signed by the registrar or other proper officer;
 - c) An endorsement on a certificate of registry purporting to be signed by the registrar or other proper officer;
 - d) Every declaration made in pursuance of this Part of this Act in respect of a British ship.
3. A copy or transcript of the register of British ships kept by the Registrar-General of Shipping and Seamen under the direction of the Board of Trade shall be admissible in evidence in manner provided by this Act, and have the same effect to all intents as the original register of which it is a copy or transcript.

Forms of documents, and instructions as to registry.

65. 1. The several instruments and documents specified in the second part of the First Schedule to this Act shall be in the form prescribed by the Commissioners of Customs, with the consent of the Board of Trade, or as near thereto as circumstances permit; and the Commissioners of Customs may, with the consent of the Board of Trade, make such alterations in the forms so prescribed, and also in the forms set out in the first part of the said Schedule, as they may deem requisite.
2. A registrar shall not be required without the special direction of the Commissioners of Customs to receive and enter in the register book any bill of sale, mortgage, or other instrument for the disposal or transfer of any ship or share, or any interest therein, which is made in any form other than that for the time being required under this Part of this Act, or which contains any particulars other than those contained in such form; but the said Commissioners shall, before altering the forms, give such public notice thereof as may be necessary in order to prevent inconvenience.
3. The Commissioners of Customs shall cause the said forms to be supplied to all registrars under this Act for distribution to persons requiring to use the same, either free of charge, or at such moderate prices as they may direct.
4. The Commissioners of Customs, with the consent of the Board of Trade, may also, for carrying into effect this Part of this Act, give such instructions to their officers as to the manner of making entries in the register book, as to the execution and attestation of powers of attorney, as to any evidence required for identifying any person, as to the referring to themselves of any question involving doubt or difficulty, and generally as to any act or thing to be done in pursuance of this Part of this Act, as they think fit.

Forgery and false Declarations.

Forgery of documents.

66. If any person forges, or fraudulently alters, or assists in forging or fraudulently altering, or procures to be forged or fraudulently altered, any of the following documents, namely, any register book, builder's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instrument of mortgage, or certi-

cate of mortgage or sale under this Part of this Act, or any entry or endorsement required by this Part of this Act to be made in or on any of those documents, that person shall in respect of each offence be guilty of felony.

False declarations.

67. 1. If any person in the case of any declaration made in the presence of or produced to a registrar under this part of this Act, or in any document or other evidence produced to such registrar—
- a) Wilfully makes, or assists in making, or procures to be made any false statement concerning the title to or ownership of, or the interest existing in any ship, or any share in a ship; or
 - b) Utters, produces, or makes use of any declaration, or document containing any such false statement knowing the same to be false, he shall in respect of each offence be guilty of a misdemeanor.
2. If any person wilfully makes a false declaration touching the qualification of himself or of any other person or of any corporation to own a British ship or any share therein, he shall for each offence be guilty of a misdemeanor, and that ship or share shall be subject to forfeiture under this Act, to the extent of the interest therein of the declarant, and also, unless it is proved that the declaration was made without authority, of any person or corporation on behalf of whom the declaration is made.

National Character and Flag.

National character of ship to be declared before clearance.

68. 1. An officer of customs shall not grant a clearance or transire for any ship until the master of such ship has declared to that officer the name of the nation to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance or transire.
2. If a ship attempts to proceed to sea without such clearance or transire, she may be detained until the declaration is made.

Penalty for unduly assuming British character.

69. 1. If a person uses the British flag and assumes the British national character on board a ship owned in whole or in part by any persons not qualified to own a British ship, for the purpose of making the ship appear to be a British ship, the ship shall be subject to forfeiture under this Act, unless the assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.
2. In any proceeding for enforcing any such forfeiture the burden of proving a title to use the British flag and assume the British national character shall lie upon the person using and assuming the same.

Penalty for concealment of British or assumption of foreign character.

70. If the master or owner of a British ship does anything or permits anything to be done, or carries or permits to be carried any papers or documents, with intent to conceal the British character of the ship from any person entitled by British law to inquire into the same, or with intent to assume a foreign character, or with intent to deceive any person so entitled as aforesaid, the ship shall be subject to forfeiture under this Act; and the master, if he commits or is privy to the commission of the offence, shall in respect of each offence be guilty of a misdemeanor.

Penalty for acquiring ownership if unqualified.

71. If an unqualified person acquires as owner, otherwise than by such transmission as hereinbefore provided for, any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, that interest shall be subject to forfeiture under this Act.

Liabilities of ships not recognised as British.

72. Where it is declared by this Act that a British ship shall not be recognised as a British ship, that ship shall not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by British ships, nor to use the British flag or assume the British national character, but so far as regards the payment of dues, the liability to fines and forfeiture, and the punishment of offences committed

on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised British ship.

National colours for ships, and penalty on carrying improper colours.

73. 1. The red ensign usually worn by merchant ships, without any defacement or modification whatsoever, is hereby declared to be the proper national colours for all ships and boats belonging to any British subject, except in the case of Her Majesty's ships or boats, or in the case of any other ship or boat for the time being allowed to wear any other national colours in pursuance of a warrant from Her Majesty or from the Admiralty.
2. If any distinctive national colours, except such red ensign or except the Union Jack with a white border, or if any colours usually worn by Her Majesty's ships or resembling those of Her Majesty, or if the pendant usually carried by Her Majesty's ships or any pendant resembling that pendant, are or is hoisted on board any ship or boat belonging to any British subject without warrant from Her Majesty or from the Admiralty, the master of the ship or boat, or the owner thereof, if on board the same, and every other person hoisting the colours or pendant, shall for each offence incur a fine not exceeding five hundred pounds.
3. Any commissioned officer on full pay in the military or naval service of Her Majesty, or any officer of customs in Her Majesty's dominions, or any British consular officer, may board any ship or boat on which any colours or pendant are hoisted contrary to this Act, and seize and take away the colours or pendant, and the colours or pendant shall be forfeited to Her Majesty.
4. A fine under this section may be recovered with costs in the High Court in England or Ireland, or in the Court of Session in Scotland, or in any Colonial Court of Admiralty or Vice-Admiralty Court within Her Majesty's dominions.
5. Any offence mentioned in this section may also be prosecuted, and the fine for it recovered, summarily, provided that:—
- a) Where any such offence is prosecuted summarily, the court imposing the fine shall not impose a higher fine than one hundred pounds; and
 - b) Nothing in this section shall authorise the imposition of more than one fine in respect of the same offence.

Penalty on ship not showing colours.

74. 1. A ship belonging to a British subject shall hoist the proper national colours—
- a) On a signal being made to her by one of Her Majesty's ships (including any vessel under the command of an officer of Her Majesty's navy on full pay); and
 - b) On entering or leaving any foreign port; and
 - c) If of fifty tons gross tonnage or upwards, on entering or leaving any British port.
2. If default is made on board any such ship in complying with this section, the master of the ship shall for each offence be liable to a fine not exceeding one hundred pounds.
3. This section shall not apply to a fishing boat duly entered in the fishing boat register and lettered and numbered as required by the Fourth Part of this Act.

Saving for Admiralty.

75. The provisions of this Act with respect to colours worn by merchant ships shall not affect any other power of the Admiralty in relation thereto.

Forfeiture of Ship.

Proceedings on forfeiture of ship.

76. 1. Where any ship has either wholly or as to any share therein become subject to forfeiture under this Part of this Act:
- a) Any commissioned officer on full pay in the military or naval service of Her Majesty;
 - b) Any officer of customs in Her Majesty's dominions; or

- c) Any British consular officer may seize and detain the ship, and bring her for adjudication before the High Court in England or Ireland, or before the Court of Session in Scotland, and elsewhere before any Colonial Court of Admiralty or Vice-Admiralty Court in Her Majesty's dominions, and the court may thereupon adjudge the ship with her tackle, apparel, and furniture to be forfeited to Her Majesty, and make such order in the case as to the court seems just, and may award to the officer bringing in the ship for adjudication such portion of the proceeds of the sale of the ship, or any share therein, as the Court think fit.
2. Any such officer as in this section mentioned shall not be responsible either civilly or criminally to any person whomsoever in respect of any such seizure or detention as aforesaid, notwithstanding that the ship has not been brought in for adjudication, or if so brought in is declared not liable to forfeiture, if it is shown to the satisfaction of the court before whom any trial relating to such ship or such seizure or detention is held that there were reasonable grounds for such seizure or detention; but if no such grounds are shown the court may award costs and damages to any party aggrieved, and make such other order in the premises as the Court thinks just.

Measurement of Ship and Tonnage.

77. Rules for ascertaining register tonnage.
78. Allowance for engine room space in steamships.
79. Deductions for ascertaining tonnage.
80. Provisions as to deductions in case of certain steamships.
81. Measurement of ships with double bottoms for water ballast.
82. Tonnage once ascertained to be the tonnage of ship.
83. Fees for measurement.
84. Tonnage of ships of foreign countries adopting tonnage regulations.
85. Space occupied by deck cargo to be liable to dues.
86. Surveyors and regulations for measurement of ships.
87. Levy of tonnage rates under local Acts on the registered tonnage.

Ports of Registry in Place under Foreign Jurisdiction Act.

Foreign ports of registry. 53 & 54 Vict. c. 37.

88. Where, in accordance with the Foreign Jurisdiction Act, 1890, Her Majesty exercises jurisdiction within any port, it shall be lawful for Her Majesty, by Order in Council, to declare that port a port of registry, and by the same or any subsequent Order in Council to declare the description of persons who are to be registrars of British ships at that port of registry, and to make regulations with respect to the registry of British ships thereat.

Registry in Colonies.

Powers of Governors in colonies.

89. In every British possession the governor of the possession shall occupy the place of the Commissioners of Customs with regard to the performance of anything relating to the registry of a ship or of any interest in a ship registered in that possession, and shall have power to approve a port within the possession for the registry of ships.

Terminable certificates of registry for small ships in colonies.

90. 1. The Governor of a British Possession may, with the approval of a Secretary of State, make regulations providing that, on an application for the registry under this Act in that Possession of any ship which does not exceed sixty tons burden, the registrar may grant, in lieu of a certificate of registry as required by this Act, a certificate of registry to be terminable at the end of six months or any longer period from the granting thereof, and all certificates of registry granted under any such regulations shall be in such form and have effect subject to such conditions as the regulations provide.

2. Any ship to which a certificate is granted under any such regulations shall, while that certificate is in force, and in relation to all things done or omitted during that period, be deemed to be a registered British ship.

Application of Part I.

Application of Part I.

91. This Part of this Act shall apply to the whole of Her Majesty's dominions, and to all places where Her Majesty has jurisdiction.

Part II. Masters and Seamen — Certificates of Competency (Sections 92—104) — *Apprenticeship to the Sea Service* (Sections 105—109) — *Licences to supply Seamen* (Sections 110—112).

Engagement of Seamen.

113. Agreements with crew.
114. Form, period, and conditions of agreements with crew.
115. Special provisions as to agreements with crew of foreign-going ships.
116. Special provisions as to agreements with crew of home-trade ships.
117. Changes in crew of foreign-going ship to be reported.
118. Certificate as to agreements with crew of foreign-going ships.
119. Certificate as to agreements with crew of home-trade ships.
120. Copy of agreement to be made accessible to crew.
121. Forgery, &c. of agreements with crew.
122. Alterations in agreements with crew.
123. Seamen not to be bound to produce agreement.
124. Engagement of seamen in colonial and foreign ports.
125. Agreements with lascars. Saving for 4 Geo. 4 c. 80. ss. 25, 26, &c.
126. Rating of seamen.

Discharge of Seamen.

127. Discharge before superintendent.
128. Certificate of discharge and return of certificate to officer on discharge.
129. Reports of seaman's character.
130. False or forged certificate of discharge or report of character.

Payment of Wages.

131. Payment of wages before superintendent.
132. Master to deliver account of wages.
133. Deductions from wages of seamen.
134. Time of payment of wages for foreign-going ships.
135. Time of payment of wages for home-trade ships.
136. Settlement of wages.
137. Decision of questions by superintendents.
138. Power of superintendent to require production of ship's papers.
139. Rule as to payment of British seamen in foreign money.

Advance and Allotment of Wages (Sections 140—144) — *Seamen's Money Orders and Savings Banks* (Sections 145—154).

Rights of Seamen in respect of Wages.

155. Right to wages, &c. when to begin.
156. Right to recover wages, and salvage not to be forfeited.
157. Wages not to depend on freight.
158. Wages on termination of service by wreck or illness.
159. Wages not to accrue during refusal to work or imprisonment.
160. Forfeiture of wages, &c. of seaman when illness caused by his own default.
161. Costs of procuring punishment may be deducted from wages.
162. Compensation to seamen improperly discharged.
163. Restriction on sale of, and charge upon, wages.

Mode of recovering Wages (Sections 164—167) — *Power of court to rescind contract between owner or master and seaman or apprentice* (Section 168) — *Property*

of deceased Seamen (Sections 169—181) — *Reimbursement of Relief to Seamen's Families* (Sections 182—183) — *Destitute Seamen* (Sections 184—185) — *Leaving Seamen Abroad* (Sections 186—189) — *Distressed Seamen* (Sections 190—194) — *Volunteering into the Navy*. (Sections 195—197) — *Provisions, Health, and Accommodation* (Sections 198—210) — *Facilities for making complaint* (Section 211) — *Protection of Seamen from Imposition* (Sections 212—219) — *Provisions as to Discipline* (Sections 220—238) — *Official Logs* (Sections 239—243) — *Local Marine Boards* (Sections 244—245) — *Mercantile Marine Offices* (Sections 246—250) — *Registration of and Returns respecting Seamen* (Sections 251—258).

259. Corporations, &c. may grant sites for sailors homes.

Application of Part II (Sections 260—266).

Part III. Passenger and Emigrant Ships — *I. Definitions* — *Definition of Passenger Steamer and Passenger* (Section 267) — *Definition of Emigrant Ship, &c.* (Sections 268—270) — *II. Passenger Steamers* — *Survey of Passenger Steamers* (Sections 271—284) — *General Equipment of Passenger Steamers* (Sections 285—286) — *Keeping Order in Passenger Steamers* (Sections 287—288) — *III. Emigrant Ships* — *Survey of Emigrant Ships* — (Section 289) — *Equipments* (Section 290) — *Number of, and Accommodation for, Passengers* (Sections 291—294) — *Provisions, Water, and Medical Stores* (Sections 295—300) — *Dangerous Goods, and Carriage of Cattle* (Sections 301—302) — *Medical Officer, Staff, and Crew* (Sections 303—305) — *Medical Inspection* (Sections 306—308) — *Master's Bond* (Sections 309—310) — *Passengers' Lists* (Sections 311—313) — *Certificate for Clearance* (Sections 314—319) — *Passengers' Contracts* (Sections 320—323) — *Regulations as to Steerage Passengers* (Sections 324—326) — *Maintenance of steerage passengers after arrival* (Section 327) — *Detention and Wrongful Landing of Passengers* (Sections 328—330) — *Provisions in case of Wreck* (Sections 331—335) — *Voyages to the United Kingdom* (Sections 336—338) — *Registration of Births and Deaths* (Section 339) — *Saving of Right of Action* (Section 340) — *Passage Brokers* (Sections 341—346) — *Emigrant Runners* (Sections 347—352) — *Frauds in procuring Emigration* (Sections 353—354) — *Emigration Officers* (Section 355) — *Legal Proceedings* (Sections 356—358) — *Supplemental* (Sections 359—363) — *Application of Part III as regards Emigrant Ships* (Sections 364—368).

Part IV. Fishing Boats — *Application of Part IV, &c.* (Sections 369—372) — *I. Provisions applying to all Fishing Boats and to the whole Fishing Service* — *Fishing Boats' Register* (Sections 373—375) — *Discipline* (Sections 376—384) — *Provisions as to Deaths, Injuries, Ill-treatment, Punishments, and Casualties in Fishing Boats* (Sections 385—386) — *Settlement of Disputes* (Section 387) — *Provisions for ascertaining Profits of Fishing Boats* (Section 388) — *Agreements for Fishing Vessels in Scotland* (Section 389) — *Fees and Control of Superintendents* (Sections 390—391) — *II. Provisions applying to all Fishing Boats of Twentyfive Tons Tonnage and upwards* — *Apprenticeship and Agreements with Boys* (Sections 392—398) — *III. Provisions applying to Trawlers* — *Engagement of Seamen* (Sections 399—408) — *Payment of Wages and Discharge of Seamen* (Sections 409—412) — *Certificates of Skippers and Second Hands* (Sections 413—416) — *Conveyance of Fish from Trawlers* (Section 417).

Part V. Safety.

Prevention of Collisions.

Collision regulations.

418. 1. Her Majesty may, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, make regulations for the prevention of collisions at sea, and may thereby regulate the lights to be carried and exhibited, the fog signals to be carried and used, and the steering and sailing rules to be observed, by ships, and those regulations (in this Act referred to as the collision regulations), shall have effect as if enacted in this Act.
2. The collision regulations, together with the provisions of this Part of this Act relating thereto, or otherwise relating to collisions, shall be observed by all foreign ships within British jurisdiction, and in any case arising

in a British court concerning matters arising within British jurisdiction foreign ships shall, so far as respects the collision regulations and the said provisions of this Act, be treated as if they were British ships.

Observance of collision regulations.

- 419.** 1. All owners and masters of ships shall obey the collision regulations, and shall not carry or exhibit any other lights, or use any other fog signals, than such as are required by those regulations.
2. If an infringement of the collision regulations is caused by the wilful default of the master or owner of the ship, that master or owner shall, in respect of each offence, be guilty of a misdemeanor.
3. If any damage to person or property arises from the non-observance by any ship of any of the collision regulations, the damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of the ship at the time, unless it is shown to the satisfaction of the court that the circumstances of the case made a departure from the regulation necessary.
4. Where in a case of collision it is proved to the court before whom the case is tried, that any of the collision regulations have been infringed, the ship by which the regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the court that the circumstances of the case made departure from the regulation necessary.
5. The Board of Trade shall furnish a copy of the collision regulations to any master or owner of a ship who applies for it.
- 420.** Inspection as to lights.
- 421.** Saving for local rules of navigation in harbours, &c.

Duty of vessel to assist the other in case of collision.

- 422.** 1. In every case of collision between two vessels, it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel crew and passengers (if any):
- a) To render to the other vessel, her master, crew and passengers (if any) such assistance as may be practicable, and may be necessary to save them from any danger caused by the collision, and to stay by the other vessel until he has ascertained that she has no need of further assistance; and also
- b) To give to the master or person in charge of the other vessel the name of his own vessel and of the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.
2. If the master or person in charge of a vessel fails to comply with this section, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act neglect or default.
3. If the master or person in charge fails without reasonable cause to comply with this section, he shall be guilty of a misdemeanor, and, if he is a certificated officer, an inquiry into his conduct may be held, and his certificate cancelled or suspended.

Collisions to be entered in official log.

- 423.** 1. In every case of collision, in which it is practicable so to do, the master of every ship shall immediately after the occurrence cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log book (if any), and the entry shall be signed by the master, and also by the mate or one of the crew.
2. If the master fails to comply with this section, he shall for each offence be liable to a fine not exceeding twenty pounds.

Application of collision regulations to foreign ships.

424. Whenever it is made to appear to Her Majesty in Council that the Government of any foreign country is willing that the collision regulations, or the provisions of this Part of this Act relating thereto or otherwise relating to collisions, or any of those regulations or provisions should apply to the ships of that country when beyond the limits of British jurisdiction, Her Majesty may, by Order in Council,

direct that those regulations and provisions shall, subject to any limitation of time conditions and qualifications contained in the Order, apply to the ships of the said foreign country, whether within British jurisdiction or not, and that such ships shall for the purpose of such regulations and provisions be treated as if they were British ships.

Report of Accidents and Loss of Ship. (Sections 425—426) — *Life-saving Appliances* (Sections 427—431) — *General Equipment* (Sections 432—433) — *Signals of Distress* (Sections 434—435) — *Draught of Water and Load-Line* (Sections 436—445).

Dangerous Goods.

446. Restrictions on carriage of dangerous goods.

447. Penalty for misdescription of dangerous goods.

448. Power to deal with goods suspected of being dangerous.

449. Forfeiture of dangerous goods improperly sent or carried.

450. Saving for other enactments relating to dangerous goods.

Loading of Timber (Section 451) — *Carriage of Grain* (Sections 452—456) — *Unseaworthy Ships* (Sections 457—463).

Part VI. Special Shipping Inquiries and Courts — *Inquiries and Investigations as to Shipping Casualties* (Sections 464—468) — *Power as to Certificates of Officers, &c.* (Sections 469—474) — *Rehearing of Inquiries and Investigations* (Section 475) — *Supplemental Provisions as to Investigations and Inquiries* (Sections 476—479) — *Naval Courts on the High Seas and Abroad* (Sections 480—486) — *Courts of Survey* (Sections 487—489) — *Scientific Referees* (Section 490) — *Payments to Officers of Courts* (Section 491).

Part VII. Delivery of Goods.

Delivery of Goods and Lien for Freight.

Definitions under Part VII.

492. In this Part of this Act unless the context otherwise requires

The expression “goods” includes every description of wares and merchandise.

The expression “wharf” includes all wharves, quays, docks, and premises in or upon which any goods, when landed from ships, may be lawfully placed.

The expression “warehouse” includes all warehouses, buildings, and premises in which goods, when landed from ships, may be lawfully placed.

The expression “report” means the report required by the customs laws to be made by the master of an importing ship.

The expression “entry” means the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship.

The expression “shipowner” includes the master of the ship and every other person authorised to act as agent for the owner or entitled to receive the freight, demurrage, or other charges payable in respect of the ship.

The expression “owner” used in relation to goods means every person who is for the time entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien (if any), to that lien.

The expression “wharfinger” means the occupier of a wharf as herein-before defined.

The expression “warehouseman” means the occupier of a warehouse as herein-before defined.

Power of shipowner to enter and land goods on default by owner of goods.

493. 1. Where the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof, or, having made entry thereof, to land the same or take delivery thereof, and to proceed therewith with all convenient speed, by the times severally herein-after mentioned, the shipowner may make entry of and land or unship the goods at the following times:

a) If a time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the time so expressed;

- b) If no time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or holiday, from the time of the report of the ship.
2. Where a shipowner lands goods in pursuance of this section he shall place them, or cause them to be placed:
 - a) If any wharf or warehouse is named in the charter-party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed and if they can be conveniently there received, on that wharf or in that warehouse; and
 - b) In any other case on some wharf or in some warehouse on or in which goods of a like nature are usually placed; the wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Commissioners of Customs for the landing of dutiable goods.
3. If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same, he shall be allowed to do so, and his entry shall in that case be preferred to any entry which may have been made by the shipowner.
4. If any goods are, for the purpose of convenience in assorting the same, landed at the wharf where the ship is discharged, and the owner of the goods at the time of that landing has made entry and is ready and offers to take delivery thereof, and to convey the same to some other wharf or warehouse, the goods shall be assorted at landing, and shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment; and the expense of and consequent on that landing and assortment shall be borne by the shipowner.
5. If at any time before the goods are landed or unshipped the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make that delivery, and has also failed at the time of that offer to give the owner of the goods correct information of the time at which the goods can be delivered, then the shipowner shall, before landing or unshipping the goods, in pursuance of this section, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours' notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without that notice, do so at his own risk and expense.

Lien for freight on landing goods.

494. If at the time when any goods are landed from any ship, and placed in the custody of any person as a wharfinger or warehouseman, the shipowner gives to the wharfinger or warehouseman notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount mentioned in the notice, the goods so landed shall, in the hands of the wharfinger or warehouseman, continue subject to the same lien, if any, for such charges as they were subject to before the landing thereof; and the wharfinger or warehouseman receiving those goods shall retain them until the lien is discharged as herein-after mentioned, and shall, if he fails so to do, make good to the shipowner any loss thereby occasioned to him.

Discharge of lien.

495. The said lien for freight and other charges shall be discharged:

1. Upon the production to the wharfinger or warehouseman of a receipt for the amount claimed as due, and delivery to the wharfinger or warehouseman of a copy thereof or of a release of freight from the shipowner, and
2. Upon the deposit by the owner of the goods with the wharfinger or warehouseman of a sum of money equal in amount to the sum claimed as aforesaid by the shipowner;

but in the latter case the lien shall be discharged without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

Provisions as to deposits by owners of goods.

496. 1. When a deposit as aforesaid is made with the wharfinger or warehouseman, the person making the same may, within fifteen days after making it, give to the wharfinger or warehouseman notice in writing to retain it, stating in the notice the sums, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, but if no such notice is given, the wharfinger or warehouseman may, at the expiration of the fifteen days, pay the sum deposited over to the shipowner.
2. If a notice is given as aforesaid the wharfinger or warehouseman shall immediately apprise the shipowner of it, and shall pay or tender to him out of the sum deposited the sum, if any, admitted by the notice to be payable, and shall retain the balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the notice.
3. At the expiration of those thirty days unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum, or otherwise for the settlement of any disputes which may have arisen between them concerning the freight or other charges as aforesaid, and notice in writing of those proceedings has been served on the wharfinger or warehouseman, the wharfinger or warehouseman shall pay the balance or sum to the owner of the goods.
4. A wharfinger or warehouseman shall by any payment under this section be discharged from all liability in respect thereof.

Sale of goods by warehousemen.

497. 1. If the lien is not discharged, and no deposit is made as aforesaid, the wharfinger or warehouseman may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as in his discretion he thinks fit, sell by public auction, either for home use or for exportation, the goods or so much thereof as may be necessary to satisfy the charges herein-after mentioned.
2. Before making the sale the wharfinger or warehouseman shall give notice thereof by advertisement in two local newspapers circulating in the neighbourhood, or in one daily newspaper published in London, and in one local newspaper, and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharfinger or warehouseman, or is otherwise known to him, send notice of the sale to the owner of the goods by post.
3. The title of a bona fide purchaser of the goods shall not be invalidated by reason of the omission to send the notice required by this section, nor shall any such purchaser be bound to inquire whether the notice has been sent.

Application of proceeds of sale.

498. The proceeds of sale shall be applied by the wharfinger or warehouseman as follows, and in the following order:

1. First, if the goods are sold for home use, in payment of any customs or excise duties owing in respect thereof; then
2. In payment of the expenses of the sale; then
3. In payment of the charges of the wharfinger or warehouseman and the shipowner according to such priority as may be determined by the terms of the agreement (if any) in that behalf between them; or, if there is no such agreement:
 - a) In payment of the rent, rates, and other charges due to the wharfinger or warehouseman in respect of the said goods; and then
 - b) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods;
 and the surplus, if any, shall be paid to the owner of the goods.

Warehouseman's rent and expenses.

499. Whenever any goods are placed in the custody of a wharfinger or warehouseman, under the authority of this Part of this Act, the wharfinger or warehouseman shall be entitled to rent in respect of the same, and shall also have power, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the wharfinger or warehouseman are necessary for the proper custody and preservation of the goods, and shall have a lien on the goods for the rent and expenses.

Warehousemen's protection.

500. Nothing in this Part of this Act shall compel any wharfinger or warehouseman to take charge of any goods which he would not have been liable to take charge of if this Act had not been passed; nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Part of this Act.

Saving for powers under local Acts.

501. Nothing in this Part of this Act shall take away or abridge any powers given by any local Act to any harbour authority, body corporate, or persons, whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods; nor shall anything in this Part of this Act take away or diminish any rights or remedies given to any shipowner or wharfinger or warehouseman by any local Act.

Part VIII. Liability of Shipowners.¹⁾

Limitation of shipowner's liability in certain cases of loss of, or damage to, goods.

502. The owner of a British sea-going ship, or any share therein, shall not be liable to make good to any extent whatever any loss or damage happening without his actual fault or privity in the following cases, namely:

1. Where any goods, merchandise, or other things whatsoever taken in or put on board his ship are lost or damaged by reason of fire on board the ship; or
2. Where any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board his ship, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with, or secreting thereof.

Limitation of owner's liability in certain cases of loss of life, injury, or damage.

- 503.** 1. The owners of a ship, British or foreign, shall not, where all or any of the following occurrences take place without their actual fault or privity; (that is to say,)
- a) Where any loss of life or personal injury is caused to any person being carried in the ship;
 - b) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship;
 - c) Where any loss of life or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship;
 - d) Where any loss or damage is caused to any other vessel, or to any goods, merchandise, or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship;
- be liable to damages beyond the following amounts; (that is to say,)
1. In respect of loss of life or personal injury, either alone or together with loss of or damage to vessels, goods, merchandise, or other things, an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage; and
 2. In respect of loss of, or damage to, vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage.

¹⁾ See 61 & 62 Vict. c. 14; 63 & 64 Vict. c. 32, *infra*.

2. For the purposes of this section:

- a) The tonnage of a steam ship shall be her gross tonnage without deduction on account of engine room; and the tonnage of a sailing ship shall be her registered tonnage.

Provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use which is certified under the regulations scheduled to this Act with regard thereto;

- b) Where a foreign ship has been or can be measured according to British law, her tonnage, as ascertained by that measurement shall, for the purpose of this section, be deemed to be her tonnage;
- c) Where a foreign ship has not been and cannot be measured according to British law, the surveyor general of ships in the United Kingdom, or the chief measuring officer of any British possession abroad, shall, on receiving from or by the direction of the court hearing the case, in which the tonnage of the ship is in question, such evidence concerning the dimensions of the ship as it may be practicable to furnish, give a certificate under his hand stating what would in his opinion have been the tonnage of the ship if she had been duly measured according to British law, and the tonnage so stated in that certificate shall, for the purposes of this section, be deemed to be the tonnage of the ship.
3. The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to vessels, goods, merchandise, or things as aforesaid arising on distinct occasions to the same extent as if no other loss, injury, or damage had arisen.

Power of courts to consolidate claims against owners &c.¹⁾

504. Where any liability is alleged to have been incurred by the owner of a British or foreign ship in respect of loss of life, personal injury, or loss of or damage to vessels or goods, and several claims are made or apprehended in respect of that liability, then, the owner may apply in England and Ireland to the High Court, or in Scotland to the Court of Session, or in a British possession to any competent court, and that court may determine the amount of the owner's liability and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the court thinks just.

Part owners to account in respect of damages.

505. All sums paid for or on account of any loss or damage in respect whereof the liability of owners is limited under the provisions of this Part of the Act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

Insurances of certain risks not invalid.

506. An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the liability of owners is limited under this Part of this Act shall not be invalid by reason of the nature of the risk.

Proof of passengers on board ship.

507. In any proceeding under this Part of this Act against the owner of a ship or share therein with respect to loss of life, the passenger lists under the Third Part of this Act shall be received as evidence that the person upon whose death proceedings are taken under this Part of this Act was a passenger on board the ship at the time of death.

Liability in certain cases not affected.

508.²⁾ Nothing in this Part of this Act shall be construed to lessen or take away any liability to which any master or seaman, being also owner or part owner of

¹⁾ See 63 & 64 Viet. c. 32, *infra*.

²⁾ See 61 & 62 Viet. c. 14, *infra*.

the ship to which he belongs, is subject in his capacity of master or seaman, or to extend to any British ship which is not recognised as a British ship within the meaning of this Act.

Extent of Part VIII.

509. This Part of this Act shall, unless the context otherwise requires, extend to the whole of Her Majesty's dominions.

Part IX. Wreck and Salvage.

Vessels in Distress.

Definition of "wreck" and "salvage."

510. In this Part of this Act unless the context otherwise requires:

1. The expression "wreck" includes jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water;
2. The expression "salvage" includes all expenses, properly incurred by the salvor in the performance of the salvage services.

511. Duty of receiver where vessel in distress.

512. Powers of the receiver in case of vessels in distress.

513. Power to pass over adjoining lands.

514. Power of receiver to suppress plunder and disorder by force.

515. Liability for damage in case of a vessel plundered.

516. Exercise of powers of receiver in his absence.

517. Examination in respect of ships in distress.

Dealing with Wreck.

Provision as to wreck found in the United Kingdom.

518. 1. Where any person finds or takes possession of any wreck within the limits of the United Kingdom he shall:

a) If he is the owner thereof, give notice to the receiver of the district stating that he has found or taken possession of the same, and describing the marks by which the same may be recognised;

b) If he is not the owner thereof, as soon as possible deliver the same to the receiver of the district:

and if any person fails, without reasonable cause, to comply with this section, he shall, for each offence, be liable to a fine not exceeding one hundred pounds, and shall in addition, if he is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or, if it is unclaimed to the person entitled to the same, double the value thereof, to be recovered in the same way as a fine of a like amount under this Act.

519. Penalty for taking wreck at time of casualty.

Notice of wreck to be given by receiver.

520. Where a receiver takes possession of any wreck he shall within forty-eight hours:

a) Cause to be posted in the custom house nearest to the place where the wreck was found or was seized by him a description thereof and of any marks by which it is distinguished; and

b) If in his opinion the value of the wreck exceeds twenty pounds, also transmit a similar description to the secretary of Lloyd's in London, and the secretary shall post it in some conspicuous position for inspection.

Claims of owners to wreck.

521. 1. The owner of any wreck in the possession of the receiver, upon establishing his claim to the same to the satisfaction of the receiver within one year from the time at which the wreck came into the possession of the receiver, shall, upon paying the salvage, fees, and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him.

2. Where any articles belonging to or forming part of a foreign ship, which has been wrecked on or near the coasts of the United Kingdom, or belonging to and forming part of the cargo, are found on or near those coasts,

or are brought into any port in the United Kingdom, the consul general of the country to which the ship or in the case of cargo to which the owners of the cargo may have belonged, or any consular officer of that country authorised in that behalf by any treaty or arrangement with that country, shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of the articles.

Immediate sale of wreck by receiver in certain cases.

522. A receiver may at any time sell any wreck in his custody, if in his opinion:

- a) It is under the value of five pounds; or
- b) It is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
- c) It is not of sufficient value to pay for warehousing, and the proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights, and liabilities as if the wreck had remained unsold.

Unclaimed Wreck (Sections 523—529) — *Removal of Wrecks* (Sections 530—534) — *Offences in respect of Wreck* (Sections 535—537) — *Marine Store Dealers* (Sections 538—542) — *Marking of Anchors* (Section 543).

Salvage.

Salvage payable for saving life.

- 544.** 1. Where services are rendered wholly or in part within British waters in saving life from any British or foreign vessel, or elsewhere in saving life from any British vessel, there shall be payable to the salvor by the owner of the vessel, cargo, or apparel salvaged, a reasonable amount of salvage, to be determined in case of dispute in manner herein-after mentioned.
2. Salvage in respect of the preservation of life when payable by the owners of the vessel shall be payable in priority to all other claims for salvage.
3. Where the vessel, cargo, and apparel are destroyed, or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Board of Trade may, in their discretion, award to the salvor, out of the mercantile marine fund, such sum as they think fit in whole or part satisfaction of any amount of salvage so left unpaid.

545. Salvage of life from foreign vessels.

Salvage of cargo or wreck.

546. Where any vessel is wrecked, stranded, or in distress at any place on or near the coasts of the United Kingdom or any tidal water within the limits of the United Kingdom, and services are rendered by any person in assisting that vessel or saving the cargo or apparel of that vessel or any part thereof, and where services are rendered by any person other than a receiver in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, apparel, or wreck, a reasonable amount of salvage to be determined in case of dispute in manner herein-after mentioned.

Procedure in Salvage (Sections 547—556) — *Salvage by Her Majesty's Ships* (Sections 557—564) — *Jurisdiction of High Court in Salvage* (Section 565) — *Appointment of Receivers of Wreck* (Section 566) — *Fees of Receivers of Wreck* (Sections 567—568) — *Duties on Wreck* (Section 569) — *Supplemental* (Sections 570—571).

Part X. Pilotage (Sections 572—632).

Saving for Liability of Owners and Masters.

Limitation of liability of owner or masters where pilotage is compulsory.

633. An owner or master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law.

Part XI. Lighthouses (Sections 634—675). — **Part XII. Mercantile Marine Fund** (Sections 676—679) — **Part XIII. Legal Proceedings** (Sections 680—712).

Damage occasioned by Foreign Ship.

Power to arrest foreign ship that has occasioned damage.

688. 1. Whenever any injury has in any part of the world been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, and at any time there-after that ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, a judge of any court of record in the United Kingdom (and in Scotland the Court of Session and also the sheriff of the county within whose jurisdiction the ship may be) may, upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct or want of skill of the master or mariners of the ship, issue an order directed to any officer of customs or other officer named by the judge, court, or sheriff, requiring him to detain the ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of the injury, or has given security, to be approved by the judge, court, or sheriff, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.
2. Where it appears that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the limits of the United Kingdom or three miles from the coast thereof, the ship may be detained for such time as will allow the application to be made, and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.
3. In any legal proceeding in relation to any such injury aforesaid, the person giving security shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned the damage; and the production of the order of the judge, court, or sheriff made in relation to the security shall be conclusive evidence of the liability of the defendant or defender to the proceeding.

Part XIV. Supplemental — General Control of Board of Trade (Sections 713—717) — Expenses of Commissioners of Customs (Section 718) — Documents and Forms (Sections 719—722) — Powers for enforcing Compliance with Act (Section 723) — Surveyors of Ships (Sections 724—727) — Board of Trade Inspectors (Sections 728—730) — Exemption from Rates and Harbour Dues (Sections 731—732) — Private Signals (Section 733) — Application of Act to Foreign Ships by Order in Council (Section 734) — Powers of Colonial Legislature (Sections 735—736) — Provision for Foreign Places where Her Majesty has Jurisdiction (Section 737) — Orders in Council (Section 738) — Transmission and Publication of Documents (Sections 739—740) — Exemption of Her Majesty's Ships (Section 741).

Definitions.

742. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them that is to say—

“Vessel” includes any ship or boat, or any other description of vessel used in navigation.

“Ship” includes every description of vessel used in navigation not propelled by oars.

“Foreign-going ship” includes every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits; that is to say, the coasts of the United Kingdom, the Channel Islands, and Isle of Man, and the continent of Europe between the river Elbe and Brest inclusive;

“Home-trade ship” includes every ship employed in trading or going within the following limits; that is to say, the United Kingdom, the Channel Islands, and Isle of Man, and the continent of Europe between the river Elbe and Brest inclusive;

"Home-trade passenger ship" means every home-trade ship employed in carrying passengers;

"Master" includes every person (except a pilot) having command or charge of any ship;

"Seaman" includes every person (except masters, pilots, and apprentices duly indentured and registered), employed or engaged in any capacity on board any ship;

"Wages" includes emoluments;

"Effects" includes clothes and documents;

"Salvor" means in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of that ship;

"Pilot" means any persons not belonging to a ship who has the conduct thereof;

"Court" in relation to any proceeding includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates;

"Colonial Court of Admiralty" has the same meaning as in the Colonial Courts of Admiralty Act, 1890;

"A commissioner for oaths" means a commissioner for oaths within the meaning of the Commissioners for Oaths Act, 1889;

"Chief officer of customs" includes the collector, superintendent, principal coast officer, or other chief officer of customs at each port;

"Superintendent" shall, so far as respects a British possession include any shipping master or other officer discharging in that possession the duties of a superintendent;

"Consular officer" when used in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country;

"Bankruptcy" includes insolvency;

"Representation" means probate, administration, confirmation, or other instrument constituting a person the executor, administrator, or other representative of a deceased person;

"Legal personal representative" means the person so constituted executor, administrator, or other representative of a deceased person;

"Name" includes a surname;

"Port" includes place;

"Harbour" includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter, or ship and unship goods or passengers;

"Tidal water" means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour;

"Harbour authority" includes all persons or bodies of persons, corporate or unincorporate, being proprietors of, or intrusted with, the duty, or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting a harbour;

"Conservancy authority" including all persons or bodies of persons, corporate or unincorporate, intrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of a tidal water;

"Lighthouse" shall in addition to the ordinary meaning of the word include any floating and other light exhibited for the guidance of ships, and also any sirens and any other description of fog signals, and also any addition to a lighthouse of any improved light, or any siren, or any description of fog signal;

"Buoys and beacons" includes all other marks and signs of the sea;

"The Trinity House" shall mean the master wardens, and assistants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity and of St. Clement in the parish of Deptford Strond in the county of Kent, commonly called the corporation of the Trinity House of Deptford Strond.

"The Commissioners of Irish Lights" means the body incorporated by that name under the local Act of the session held in the 30th and 31st years of the reign of Her present Majesty, chapter eighty-one, intituled, "An act to alter the constitution of the corporation for preserving and improving the port of Dublin and for other purposes connected with that body and with the port of Dublin corporation" and any Act amending the same;

“Lifeboat service” means the saving, or attempted saving of vessels, or of life or property on board vessels wrecked or aground or sunk, or in danger of being wrecked or getting aground or sinking;

Any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

Application of Act to ships propelled by electricity.

743. Any provisions of this Act applying to steamers or steamships shall apply to ships propelled by electricity or other mechanical power with such modifications as the Board of Trade may prescribe for the purpose of adaptation.

Application of Act to certain fishing vessels.

744. Ships engaged in the whale, seal, walrus, or Newfoundland cod fisheries shall be deemed to be foreign-going ships for the purpose of this Act, and not fishing boats, with the exception of ships engaged in the Newfoundland cod fisheries which belong to ports in Canada or Newfoundland.

Repeal and Savings (Sections 745—746).

Short Title and Commencement.

Short title.

747. This Act may be cited as the Merchant Shipping Act, 1894.

748. (*Repealed, S. L. R. Act, 1908.*)

Schedules.

Merchant Shipping (Liability of Shipowners) Act, 1898.

61 & 62 Vict.

Cap. XIV.

An Act to amend the Merchant Shipping Act 1894, with respect to the Liability of Shipowners (25th July 1898).

Extension of limitation of liability in certain cases of loss of life, injury or damage.

1. Sections five hundred and two to five hundred and nine inclusive of the Merchant Shipping Act, 1894, shall extend and apply to the owners, builders, or other parties interested in any ship built at any port or place in Her Majesty's dominions, from and including the launching of such ship until the registration thereof under section two of the Merchant Shipping Act, 1894. *Provided always that such owners, builders, or other parties interested as aforesaid shall not benefit under this section for a period beyond three months after the launching of such ship. (As to the Proviso see Merchant Shipping Act 1906, § 70.)*

Partial repeal of 57 & 58 Vict. c. 60. s. 508.

2. So much of section five hundred and eight of the Merchant Shipping Act, 1894, as is inconsistent with the foregoing is hereby repealed.

Measurement for tonnage for the purposes of this Act.

3. For the purposes of this Act the tonnage of a ship shall be ascertained as provided by section five hundred and three, subsection two (b) and (c) of the Merchant Shipping Act, 1894, with regard to foreign ships.

Definition.

4. For the purposes of this Act “ship” shall include every description of vessel used or intended to be used in navigation not propelled by oars and whether completed or in course of completion or construction.

Short title.

5. This Act may be cited as the Merchant Shipping (Liability of Shipowners) Act, 1898.

The Finance Act, 1899.

62 & 63 Vict.

Cap. IX.

Reduction of duty on certain bills of exchange.

10. 1. The duty payable under the Stamp Act, 1891, on bills of exchange drawn and expressed to be payable out of the United Kingdom, when actually paid or endorsed or in any manner negotiated in the United Kingdom, shall, where the amount of the money for which the bill is drawn exceeds fifty pounds, be reduced so as to be—
- a) Where the amount exceeds fifty pounds and does not exceed one hundred pounds, sixpence; and
 - b) Where the amount exceeds one hundred pounds, sixpence for every one hundred pounds and also for any fractional part of one hundred pounds of that amount.
2. The stamp duty chargeable under the Stamp Act, 1891, on bills of exchange expressed to be payable at a period not exceeding three days after date or sight shall be one penny, in lieu of the duty now chargeable thereon; and accordingly the first heading, Bill of Exchange, in the Schedule to that Act, shall be read as if the words “or within three days after date or sight” were contained therein, after the word “presentation”.

Amendment of s. 6 of 54 & 55 Vict. c. 39, as to rates of exchange.

12. 1. Where an instrument other than a bill of exchange or promissory note is charged with an ad valorem duty in respect of any money in any foreign or colonial currency, a rate of exchange for which is specified in the schedule to this Act, the stamp duty on that instrument shall, instead of being calculated as provided by section six of the Stamp Act, 1891, be calculated according to the rate of exchange so specified.
2. The Commissioners may substitute, as respects any foreign or colonial currency mentioned in the Schedule to this Act, any rate of exchange for that specified in the Schedule, and may add to the schedule a rate of exchange for any foreign or colonial currency not mentioned therein, and this Act shall be construed as if any rate of exchange for the time being substituted or added were contained in the said Schedule, and in the case of the substitution of a rate of exchange as if the rate for which the new rate is substituted were omitted from that Schedule.
3. Any substitution or addition so made by the Commissioners shall not take effect until it has been advertised in the London Gazette for two successive weeks.

Schedule.

Equivalents in Sterling of Foreign Currencies.

Gold dollar	Five to one pound.
Silver dollar	} Ten to one pound.
Yen	
Rouble	
Florins	} Twelve to one pound.
Guilders	
Gulden	
Rupce	Fifteen to one pound.
Mark	Twenty to one pound.
Franc	} Twenty-five to one pound.
Lira	

Merchant Shipping (Liability of Shipowners and others) Act, 1900.

63 & 64 Vict.

Cap. XXXII.

**An Act to amend the Merchant Shipping Act 1894,
with respect to the Liability of Shipowners and others
(6th August 1900).**

Further limitation of liability of shipowner. 57 & 58 Vict. c. 60.

1. The limitation of the liability of the owners of any ship set by section five hundred and three of the Merchant Shipping Act, 1894, in respect of loss of or damage to vessels, goods, merchandise, or other things, shall extend and apply to all cases where (without their actual fault or privity) any loss or damage is caused to property or rights of any kind, whether on land or on water, or whether fixed or moveable, by reason of the improper navigation or management of the ship.

Limitation of liability of harbour or conservancy authority.

2. 1. The owners of any dock or canal, or a harbour authority or a conservancy authority, as defined by the Merchant Shipping Act, 1894, shall not, where without their actual fault or privity any loss or damage is caused to any vessel or vessels, or to any goods, merchandise, or other things whatsoever on board any vessel or vessels, be liable to damages beyond an aggregate amount not exceeding eight pounds for each ton of the tonnage of the largest registered British ship which, at the time of such loss or damage occurring, is, or within the period of five years previous thereto has been, within the area over which such dock or canal owner, harbour authority, or conservancy authority, performs any duty or exercises any power. A ship shall not be deemed to have been within the area over which a harbour authority or a conservancy authority performs any duty, or exercises any powers, by reason only that it has been built or fitted out within such area, or that it has taken shelter within or passed through such area on a voyage between two places both situate outside that area, or that it has loaded or unloaded mails or passengers within that area.
2. For the purpose of this section the tonnage of ships shall be ascertained as provided by section five hundred and three, subsection two, of the Merchant Shipping Act, 1894, and the register of any ship shall be sufficient evidence that the gross tonnage and the deductions therefrom and the registered tonnage are as therein stated.
3. Section five hundred and four of the Merchant Shipping Act, 1894, shall apply to this section as if the words "owner of a British or foreign ship" included a harbour authority, and a conservancy authority, and the owner of a canal or of a dock.
4. For the purpose of this section the term "dock" shall include wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing-places, and jetties.
5. For the purposes of this section the term "owners of a dock or canal" shall include any person or authority having the control and management of any dock or canal, as the case may be.
6. Nothing in this section shall impose any liability in respect of any such loss or damage on any such owners or authority in any case where no such liability would have existed if this Act had not passed.

Limitation of liability where several claims arise on one occasion.

3. The limitation of liability under this Act shall relate to the whole of any losses and damages which may arise upon any one distinct occasion, although such losses and damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any general or private Act of Parliament, and notwithstanding anything contained in such Act.

Short title.

4. This Act may be cited as the Merchant Shipping (Liability of Shipowners and others) Act, 1900.

Construction.

5. This Act shall be construed as one with the Merchant Shipping Act, 1894, and that Act and the Merchant Shipping Act, 1897, the Merchant Shipping (Exemption from Pilotage) Act, 1897, the Merchant Shipping (Liability of Shipowners) Act, 1898, the Merchant Shipping (Mercantile Marine Fund) Act, 1898, and this Act, may be cited together as the Merchant Shipping Acts, 1894 to 1900.

The Finance Act, 1901.

1 Edw. VII.

Cap. VII.

Provision as to continuation clauses in policies of sea insurance. 54 & 55 Vict. c. 39.

11. 1. Notwithstanding anything contained in the Stamp Act 1891, a policy of sea insurance made for time may contain a continuation clause as defined in this section, and such a policy shall not be invalid on the ground only that by reason of the continuation clause it may become available for a period exceeding twelve months.
2. There shall be charged on a policy of sea insurance containing such a continuation clause a stamp duty of sixpence in addition to the stamp duty which is otherwise chargeable on the policy.
3. If the risk covered by the continuation clause attaches and a new policy is not issued covering the risk, the continuation clause shall be deemed to be new and separate contract of sea insurance expressed in the policy in which it is contained but not covered by the stamp thereon, and the policy shall be stamped in respect of that contract accordingly, but may be so stamped without penalty at any time not exceeding thirty days after the risk has so attached.
4. For the purposes of this section, the expression "continuation clause" means an agreement to the following or the like effect, namely that in the event of the ship, being at sea or the voyage otherwise not completed on the expiration of the policy the subject-matter of the insurance shall be held covered until the arrival of the ship, or for a reasonable time thereafter not exceeding thirty days.

Bank Holidays (Ireland) Act, 1903.

3 Edw. VII.

Cap. I.

The provisions of the Bank Holidays Act, 1871, and the Holidays Extension Act, 1875, so far as they relate to Ireland, are extended to the seventeenth day of every March when a week day, and, if a Sunday, to the next day following, and this day shall be a bank holiday in Ireland within the meaning of these Acts.

The Revenue Act, 1903.

3 Edw. VII.

Cap. XLVI.

Stamping of policies on ships under construction, etc.

8. A policy of insurance made or purporting to be made upon, or to cover any ship or vessel, or the machinery of fittings belonging to the ship or vessel whilst under construction, or repair, or on trial, shall be sufficiently stamped for the pur-

poses of the Stamp Act, 1891, and the Acts amending that Act, if stamped as a policy of sea insurance made for a voyage, and though made for a time exceeding twelve months shall not be deemed to be a policy of sea insurance made for time.

Shipowners' Negligence (Remedies) Act, 1905.

5 Edw. VII.

Cap. X.

An Act to enlarge the Remedies of Persons injured by the Negligence of Shipowners (4th August 1905).

Enlargement of remedy by action for injuries caused by negligence of a shipowner.

1. 1. If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries including fatal injuries caused by the ship, or sustained on, in, or about the ship in any port or harbour in the United Kingdom in consequence of the wrongful act, neglect, or default of the owners of the ship, or the master or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with rules of court that the owners are probably liable to pay damages in respect of such injuries, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have made satisfaction in respect of the injuries, or have given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.
2. In any legal proceeding in relation to such injuries as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship which has caused the injuries, or on, in, or about which the injuries were sustained, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.
3. Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and the expressions "port" and "harbour" have the same meaning as in that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this Act be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.
4. The words "person applying" in this section shall include an employer who has paid compensation or against whom a claim for compensation has been made under the Workmen's Compensation Act, 1897, as amended by any subsequent enactment, if he shows the judge that he probably is or will become entitled to be indemnified under that Act, and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.

Commencement and short title.

2. This Act shall come into operation on the first day of January nineteen hundred and six, and may be cited as the Shipowners' Negligence (Remedies) Act, 1905.

The Trade Marks Act, 1905.

5 Edw. VII.

Chap. XV.

An Act to consolidate and amend the Law relating to Trade Marks.

Short title.

1. This Act may be cited as the Trade Marks Act, 1905.

Commencement of Act.

2. This Act shall, save as otherwise expressly provided, come into operation on the first day of April one thousand nine hundred and six.

Part I.

Definitions.

3. In and for the purposes of this Act (unless the context otherwise requires):

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

A "trade mark" shall mean a mark used or proposed to be used upon or in connexion with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale:

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Act:

"The register" shall mean the register of trade marks kept under the provisions of this Act:

A "registered trade mark" shall mean a trade mark which is actually upon the register:

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by rules of court, and in other cases, prescribed by this Act or the Rules thereunder:

"The Court" shall mean (subject to the provisions for Scotland, Ireland and the Isle of Man) His Majesty's High Court of Justice in England.

Register of Trade Marks.

4. There shall be kept at the Patent Office for the purposes of this Act a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Comptroller-General of Patents, Designs, and Trade Marks, who is in this Act referred to as the Registrar.

Trust not to be entered on register.

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of existing register.

6. The register of trade marks existing at the date of the commencement of this Act, and all registers of trade marks kept under previous Acts, which are deemed part of the same book as such register, shall be incorporated with and form part of the register. Subject to the provisions of sections thirty-six and forty-one of this Act the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the statutes in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Act.

Inspection of and extract from register.

7. The register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and

certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Trade mark must be for particular goods.

8. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable trade marks.

9. A registrable trade mark must contain or consist of at least one of the following essential particulars:

1. The name of a company, individual, or firm represented in a special or particular manner.
2. The signature of the applicant for registration or some predecessor in his business.
3. An invented word or invented words.
4. A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname.
5. Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Board of Trade or the Court, be deemed a distinctive mark:

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Act.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured trade marks.

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on registration.

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

Application for registration.

12. 1. Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.
2. Subject to the provisions of this Act the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.
3. In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Board of Trade or to the Court at the option of the applicant.
4. An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall,

if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

5. Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.
6. The Registrar or the Board of Trade or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connexion with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Advertisement of application.

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to registration.

14. 1. Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.
2. Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.
3. The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.
4. If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.
5. The decision of the Registrar shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.
6. An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.
7. On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal.
8. In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as herein-above provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.
9. In any appeal under this section, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.
10. The Registrar, or in the case of an appeal to the Board of Trade the Board of Trade, shall have power in proceedings under this section to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid.

11. If a party giving notice of opposition or of appeal neither resides nor carries on business in the United Kingdom, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

Disclaimers.

15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Board of Trade or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration.

16. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Board of Trade otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Act to be the date of registration.

Certificate of registration.

17. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar, and sealed with the seal of the Patent Office.

Non-completion of registration.

18. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

Identical marks.

19. Except by order of the Court or in the case of trade marks in use before the thirteenth day of August one thousand eight hundred and seventy-five, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks.

20. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Board of Trade.

Concurrent user.

21. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

Assignment and transmission of trade marks.

22. A trade mark when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connexion with any goods for which it is registered together with the goodwill of the business therein in such goods.

Apportionment of marks on dissolution of partnership.

23. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

Associated Trade Marks.

24. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined trade marks.

25. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks.

26. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of

- a) statements of the goods for which they are respectively used or proposed to be used; or
- b) statements of number, price, quality, or names of places; or
- c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- d) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks.

27. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

Duration of registration.

28. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Renewal of registration.

29. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration".

Procedure on expiry of period of registration.

30. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade mark.

31. Where a trade mark has been removed from the register for nonpayment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no bona fide trade user of such trade mark during the two years immediately preceding such removal.

Correction of register.

32. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name,

1. Correct any error in the name or address of the registered proprietor of a trade mark; or
2. Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or
3. Cancel the entry of a trade mark on the register; or
4. Strike out any goods or classes of goods from those for which a trade mark is registered; or
5. Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

Registration of assignments, &c.

33. Subject to the provisions of this Act where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.

Alteration of registered trade mark.

34. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Board of Trade. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of register.

35. Subject to the provisions of this Act

1. The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry

wrongly remaining on the register, or by any error or defect in any entry in the register, make such order for making, expunging, or varying such entry as it may think fit.

2. The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connexion with the rectification of the register.
3. In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.
4. Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Trade marks registered under previous Acts.

36. No trade mark which is upon the register at the commencement of this Act and which under this Act is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Acts then in force.

Non-user of trade mark.

37. A registered trade mark may, on the application to the court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connexion with such goods, and there has in fact been no *bonâ fide* user of the same in connexion therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connexion with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

Effect of Registration.

Powers of registered proprietor.

38. Subject to the provisions of this Act—

1. The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment.
2. Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark.

39. Subject to the provisions of section forty-one of this Act and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connexion with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be *prima facie* evidence of validity.

40. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the fact that a person is registered as proprietor of such trade mark shall be *primâ facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years.

41. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Act, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section eleven of this Act:

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connexion with goods upon or in connexion with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty-one of this Act.

Unregistered trade mark.

42. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the thirteenth of August one thousand eight hundred and seventy-five, and has been refused registration under this Act. The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement.

43. In an action for the infringement of a trade mark the court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connexion with such goods by other persons.

User of name, address, or description of goods.

44. No registration under this Act shall interfere with any bonâ fide use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any bonâ fide description of the character or quality of his goods.

"Passing-off" action.

45. Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

Legal Proceedings.

Certificate of validity.

46. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Registrar to have notice of proceeding for rectification.

47. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

Costs of proceedings before the Court.

48. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

Mode of giving evidence.

49. In any proceeding under this Act before the Board of Trade or the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which it shall think it right so to do, the tribunal may (with the consent of the parties) take evidence *vivâ voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *vivâ voce* the Board of Trade or the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an Official Referee of the Supreme Court.

Sealed copies to be evidence.

50. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Certificate of Registrar to be evidence.

51. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Act, or rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Certificate of Board of Trade to be evidence.

52. 1. All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.
2. A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

Part II.

Powers and Duties of Registrar of Trade Marks.

Exercise of discretionary power by Registrar.

53. Where any discretionary or other power is given to the Registrar by this Act or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Appeal from Registrar.

54. Except where expressly given by the provisions of this Act or rules made thereunder there shall be no appeal from a decision of the Registrar otherwise than to the Board of Trade, but the court, in dealing with any question of the rectification of the register (including all applications under the provisions of section thirty-five of this Act), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Recognition of agents.

55. Where by this Act any act has to be done by or to any person in connexion with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Act or in particular cases by special leave of the Board of Trade be done by or to an agent of such party duly authorised in the prescribed manner.

Registrar may take directions of law officers.

56. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to His Majesty's Attorney-General or Solicitor-General for England for directions in the matter.

Annual reports of Comptroller.

57. The Comptroller General of Patents, Designs, and Trade Marks shall in his yearly report on the execution by or under him of the Patents, Designs, and Trade Marks Act, 1883, and Acts amending the same¹⁾, include a report respecting the execution by or under him of this Act as though it formed a part of or was included in such Acts.

Powers and Duties of the Board of Trade.**Proceedings before Board of Trade.**

58. All things required or authorised under this Act to be done by to or before the Board of Trade may be done by to or before the President or a secretary or an assistant secretary of the Board or any person authorised in that behalf by the President of the Board.

Appeals to Board of Trade.

59. Where under this Act an appeal is made to the Board of Trade, the Board of Trade may, if they think fit, refer any such appeal to the Court in lieu of hearing and deciding it themselves, but, unless the Board so refer the appeal, it shall be heard and decided by the Board, and the decision of the Board shall be final.

Power of Board of Trade to make rules.

60. 1. Subject to the provisions of this Act the Board of Trade may from time to time make such rules, prescribe such forms, and generally do such things as they think expedient—
- a) For regulating the practice under this Act;
 - b) For classifying goods for the purposes of registration of trade marks;
 - c) For making or requiring duplicates of trade marks and other documents;
 - d) For securing and regulating the publishing and selling or distributing in such manner as the Board of Trade think fit, of copies of trade marks and other documents;
 - e) Generally, for regulating the business of the office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar, or of the Board of Trade.
2. Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Act.
3. Before making any rules under this section the Board of Trade shall publish notice of their intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as the Board consider most expedient, so as to enable persons affected to make representations to the Board before the rules are finally settled.
4. Any rules made in pursuance of this section shall be forthwith advertised twice in the Trade Marks Journal, and shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or if not, then as soon as practicable after the beginning of the then next session of Parliament.
5. If either House of Parliament within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

Fees.

61. There shall be paid in respect of applications and registration and other matters under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade.

¹⁾ See now 7 Edw. VII c. 29.

Standardization, &c., trade marks.

62. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connexion with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connexion with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Board of Trade.

Sheffield Marks.

63. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company), and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:—

1. The Cutlers' Company shall continue to keep at Sheffield the register of trade marks (in this Act called the Sheffield register) kept by them at the date of the commencement of this Act, and, save as otherwise provided by this Act, such register shall for all purposes form part of the register.
2. The Cutlers' Company shall, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in such register before the passing of this Act.
3. An application for registration of a trade mark used on metal goods shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company.
4. Every application so made to the Cutlers' Company shall be notified to the Registrar in the prescribed manner, and, unless the Registrar within the prescribed time gives notice to the Cutlers' Company of any objection to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner.
5. If the Registrar gives notice of an objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may in the prescribed manner appeal to the Court.
6. Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the Registrar, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the Registrar on that day.
7. The provisions of this Act, and of any rules made under this Act with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section (and notwithstanding anything in any Act relating to the Cutlers' Company), apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act and any such rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the Registrar, the Patent Office, and the Register of Trade Marks respectively; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the Registrar by the Cutlers' Company.
8. When the Registrar receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on metal goods, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company.

9. Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the Court.
10. For the purposes of this section the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal.
11. For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the Master of the Cutlers' Company shall have the same effect as the certificate of the Registrar.

Cotton Marks.

64. 1. The Manchester Branch of the Trade Marks Registry of the Patent Office (herein-after called "the Manchester Branch") shall be continued according to its present constitution. A chief officer of the Manchester Branch shall be appointed who shall be styled "the Keeper of Cotton Marks", and shall act under the direction of the Registrar. The present keeper of the Manchester Branch shall be the first Keeper of Cotton Marks.
2. As regards cotton goods which have hitherto constituted classes 23, 24, and 25, under the classification of goods under the Patents, Designs, and Trade Marks Acts, 1883 to 1902, the Register of Trade Marks for all such goods, except such as may be prescribed, shall be called "the Manchester Register" and a duplicate thereof shall be kept at the Manchester Branch.
3. All applications for registration of trade marks for such cotton goods in the said classes (herein-after referred to as "cotton marks") shall be made to the Manchester Branch.
4. Every application so made to the Manchester Branch shall be notified to the Registrar in the prescribed manner together with the report of the Keeper of Cotton Marks thereon, and unless the Registrar, after considering the report and hearing, if so required, the applicant, within the prescribed time gives notice to the Keeper of Cotton Marks of objection to the acceptance of the application, it shall be advertised by the Manchester Branch and shall be proceeded with in the prescribed manner.
5. If the Registrar gives notice of objection as aforesaid the application shall not be proceeded with, but any person aggrieved may in the prescribed manner appeal to the Court or the Board of Trade, at the option of the applicant.
6. Upon the registration of a trade mark in the Manchester Register the Keeper of Cotton Marks shall upon notice thereof from the Registrar thereupon enter the mark in the duplicate of the Manchester Register, and such registration shall bear date as of the day of application to the Manchester Branch, and shall have the same effect as if the application had been made to the Registrar on that day.
7. When any mark is removed from or any cancellation or correction made in the Manchester Register notice thereof shall be given by the Registrar to the Keeper of Cotton Marks, who shall alter the duplicate register accordingly.
8. For the purpose of all proceedings in relation to trade marks entered in the Manchester Register a certificate under the hand of the Keeper of Cotton Marks shall have the same effect as a certificate of the Registrar.
9. In every application for registration of a cotton mark, if such mark has been used by the applicant or his predecessors in business prior to the date of application, the length of time of such user shall be stated on the application.
10. As from the passing of this Act—
 - a) In respect of cotton piece goods and cotton yarn no mark consisting of a word or words alone (whether invented or otherwise) shall be registered, and no word or words shall be deemed to be distinctive in respect of such goods;
 - b) In respect of cotton piece goods no mark consisting of a line heading alone shall be registered, and no line heading shall be deemed to be distinctive in respect of such goods;

- c) No registration of a cotton mark shall give any exclusive right to the use of any word, letter, numeral, line heading, or any combination thereof.
11. The right of inspection of the Manchester Register shall extend to and include the right to inspect all applications whatsoever that have been since the passing of the Trade Marks Registration Act, 1875, and hereafter shall have been made to the Manchester Branch in respect of cotton goods in classes 23, 24, and 25, whether registered, refused, lapsed, expired, withdrawn, abandoned, cancelled, or pending.
 12. The Keeper of Cotton Marks shall, on request, and on production of a facsimile of the mark, and on payment of the prescribed fee, issue a certified copy of the application for registration of any cotton mark, setting forth in such certificate the length of time of user (if any) of such mark as stated on the application, and any other particulars he may deem necessary.
 13. As regards any rules or forms affecting cotton marks which are proposed by the Board of Trade to be made, the draft of the same shall be sent to the Keeper of Cotton Marks and also to the Manchester Chamber of Commerce. And the said Keeper, and also the said Chamber, shall, if they or either of them so request, be entitled to be heard by the Board of Trade upon such proposed rules before the same are carried into effect.
 14. The existing practice whereby the keeper of the Manchester Branch consults the Trade and Merchandise Marks Committee appointed by the Manchester Chamber of Commerce upon questions of novelty or difficulty arising on applications to register cotton marks shall be continued by the Keeper of Cotton Marks.

International and Colonial Arrangements.

65. The provisions of sections one hundred and three and one hundred and four of the Patents, Designs, and Trade Marks Act, 1883 (as amended by the Patents, Designs, and Trade Marks (Amendment) Act, 1885), relating to the registration of trade marks both as enacted in such Acts and as applied by any Order in Council made thereunder, shall be construed as applying to trade marks registrable under this Act¹).

Offences.

Falsification of entries in register.

66. If any person makes or causes to be made a false entry in the register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Penalty on falsely representing a trade mark as registered.

67. 1. Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.
2. A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connexion with the trade mark the word "registered", or any words expressing or implying that registration has been obtained for the trade mark.

Unauthorised assumption of Royal Arms.

68. If any person, without the authority of His Majesty, uses in connexion with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connexion with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as

¹) See 7 Edw. VII c. 29, s. 91, *infra*.

affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

General saving for jurisdiction of Courts.

69. The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to trade marks; and with reference to any such proceedings in Scotland the term "the Court" shall mean the Court of Session; and with reference to any such proceedings in Ireland the term "the Court" shall mean the High Court of Justice in Ireland.

Isle of Man.

70. This Act shall extend to the Isle of Man, and—

1. Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man in proceedings for infringement or in any action or proceeding respecting a trade mark competent to those courts.
2. The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour and with or without a fine not exceeding one hundred pounds, at the discretion of the Court.
3. Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

71. Jurisdiction of Lancashire Palatine Court.

Offences in Scotland.

72. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

73 & 74. Repeal; Savings.

Bills of Exchange (Crossed Cheques) Act, 1906.

6 Edw. 7.

Cap. XVII.

An Act to amend section eighty-two of the Bills of Exchange Act 1882 (4th August 1906).

Amendment of 45 & 46 Vict. c. 61 s. 82.

1. A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Short title.

2. This Act may be cited as the Bills of Exchange (Crossed Cheques) Act, 1906, and this Act and the Bills of Exchange Act, 1882, may be cited together as the Bills of Exchange Acts, 1882 and 1906.

The Prevention of Corruption Act, 1906.

6 Edw. VII.

Cap. XXXIV.

An Act for the better Prevention of Corruption (4th August 1906).

Punishment of corrupt transactions with agents.

1. 1. If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift

or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal; he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine, or on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine.

2. For the purposes of this Act the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer.
3. A person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act.

2. Prosecution of offenders.

Application to Scotland.

3. This Act shall extend to Scotland, subject to the following modifications:—
 1. Section two shall not extend to Scotland;
 2. In Scotland all offences which are punishable under this Act on summary conviction shall be prosecuted before the sheriff in manner provided by the Summary Jurisdiction (Scotland) Acts.

Short title and commencement.

4. 1. This Act may be cited as the Prevention of Corruption Act, 1906.
2. This Act shall come into operation on the first day of January nineteen hundred and seven.

Marine Insurance Act, 1906.

6 Edw. VII.

Cap. XLI.

An Act to codify the Law relating to Marine Insurance (21st December 1906).

Marine Insurance.

Marine Insurance defined.

1. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

Mixed sea and land risks.

2. 1. A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

2. Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

Marine adventure and maritime perils defined.

3. 1. Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.
2. In particular there is a marine adventure where:
 - a) Any ship, goods or other moveables are exposed to maritime perils. Such property is in this Act referred to as "insurable property";
 - b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;
 - c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

"Maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

Insurable Interest.

Avoidance of wagering or gaming contracts.

4. 1. Every contract of marine insurance by way of gaming or wagering is void.
2. A contract of marine insurance is deemed to be a gaming or wagering contract:
 - a) Where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or
 - b) Where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term.

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

Insurable interest defined.

5. 1. Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.
2. In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

When interest must attach.

6. 1. The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected.
 Provided that where the subject-matter is insured "lost or not lost", the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.
2. Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

Defeasible or contingent interest.

7. 1. A defeasible interest is insurable, as also is a contingent interest.
2. In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected

the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

Partial interest.

8. A partial interest of any nature is insurable.

Re-Insurance.

9. 1. The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it.
2. Unless the policy otherwise provides, the original assured has no right or interest in respect of such re-insurance.

Bottomry.

10. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

Master's and seamen's wages.

11. The master or any member of the crew of a ship has an insurable interest in respect of his wages.

Advance freight.

12. In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.

Charges of insurance.

13. The assured has an insurable interest in the charges of any insurance which he may effect.

Quantum of interest.

14. 1. Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.
2. A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.
3. The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

Assignment of interest.

15. Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.

But the provisions of this section do not affect a transmission of interest by operation of law.

Insurable Value.

Measure of insurable value.

16. Subject to any express provision or valuation in the policy, the insurable value of the subject-matters insured must be ascertained as follows:

1. In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:
The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade.
2. In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance.
3. In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole.

4. In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

Disclosure and Representations.

Insurance is uberrimæ fidei.

17. A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

Disclosure by assured.

18. 1. Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.
2. Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.
3. In the absence of inquiry the following circumstances need not be disclosed, namely:
 - a) Any circumstance which diminishes the risk;
 - b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;
 - c) Any circumstance as to which information is waived by the insurer;
 - d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.
4. Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.
5. The term "circumstance" includes any communication made to, or information received by, the assured.

Disclosure by agent effecting insurance.

19. Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer:

- a) Every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and
- b) Every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent.

Representations pending negotiation of contract.

20. 1. Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract.
2. A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.
3. A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.
4. A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.
5. A representation as to a matter of expectation or belief is true if it be made in good faith.
6. A representation may be withdrawn or corrected before the contract is concluded.
7. Whether a particular representation be material or not is, in each case, a question of fact.

When contract is deemed to be concluded.

21. A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, although it be unstamped.

The Policy.

Contract must be embodied in policy.

22. Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

What policy must specify.

23. A marine policy must specify:

1. The name of the assured, or of some person who effects the insurance on his behalf;
2. The subject-matter insured and the risk insured against;
3. The voyage, or period of time, or both, as the case may be, covered by the insurance;
4. The sum or sums insured;
5. The name or names of the insurers.

Signature of insurer.

24. 1. A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.
2. Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

Voyage and time policies.

25. 1. Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy", and where the contract is to insure the subject-matter for a definite period of time the policy is called a "time policy". A contract for both voyage and time may be included in the same policy.
2. Subject to the provisions of section eleven of the Finance Act, 1901, a time policy which is made for any time exceeding twelve months is invalid.

Designation of subject-matter.

26. 1. The subject-matter insured must be designated in a marine policy with reasonable certainty.
2. The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.
3. Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.
4. In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

Valued policy.

27. 1. A policy may be either valued or unvalued.
2. A valued policy is a policy which specifies the agreed value of the subject-matter insured.
3. Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.
4. Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

Unvalued policy.

28. An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner herein-before specified.

Floating policy by ship or ships.

29. 1. A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.
2. The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner.
3. Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.
4. Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

Construction of terms in policy.

30. 1. A policy may be in the form in the First Schedule to this Act.
2. Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the First Schedule to this Act shall be construed as having the scope and meaning in that schedule assigned to them.

Premium to be arranged.

31. 1. Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.
2. Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable.

Double Insurance.**Double Insurance.**

32. 1. Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.
2. Where the assured is over-insured by double insurance:
- a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;
 - b) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;
 - c) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;
 - d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

Warranties, &c.**Nature of warranty.**

33. 1. A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

2. A warranty may be express or implied.
3. A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

When breach of warranty excused.

34. 1. Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.
2. Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.
3. A breach of warranty may be waived by the insurer.

Express warranties.

35. 1. An express warranty may be in any form of words from which the intention to warrant is to be inferred.
2. An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.
3. An express warranty does not exclude an implied warranty, unless it be inconsistent therewith.

Warranty of neutrality.

36. 1. Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.
2. Where a ship is expressly warranted "neutral" there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract.

No implied warranty of nationality.

37. There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk.

Warranty of good safety.

38. Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

Warranty of seaworthiness of ship.

39. 1. In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.
2. Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.
3. Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.
4. A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.
5. In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

No implied warranty that goods are seaworthy.

40. 1. In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy.
 2. In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveables to the destination contemplated by the policy.

Warranty of legality.

41. There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

The Voyage.**Implied condition as to commencement of risk.**

42. 1. Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.
 2. The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

Alteration of port of departure.

43. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach.

Sailing for different destination.

44. Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.

Change of voyage.

45. 1. Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.
 2. Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

Deviation.

46. 1. Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.
 2. There is a deviation from the voyage contemplated by the policy:
 a) Where the course of the voyage is specifically designated by the policy, and that course is departed from; or
 b) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.
 3. The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

Several ports of discharge.

47. 1. Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation.
 2. Where the policy is to "ports of discharge", within a given area, which are not named, the ship must, in the absence of any usage or sufficient

cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not there is a deviation.

Delay in voyage.

48. In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable despatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

Excuses for deviation or delay.

49. 1. Deviation or delay in prosecuting the voyage contemplated by the policy is excused:
- a) Where authorised by any special term in the policy; or
 - b) Where caused by circumstances beyond the control of the master and his employer; or
 - c) Where reasonably necessary in order to comply with an express or implied warranty; or
 - d) Where reasonably necessary for the safety of the ship or subject-matter insured; or
 - e) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or
 - f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
 - g) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.
2. When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable despatch.

Assignment of Policy.

When and how policy is assignable.

50. 1. A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.
2. Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.
3. A marine policy may be assigned by indorsement thereon or in other customary manner.

Assured who has no interest cannot assign.

51. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative:

Provided that nothing in this section affects the assignment of a policy after loss.

The Premium.

When premium payable.

52. Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium.

Policy effected through broker.

53. 1. Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.
2. Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of

effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent.

Effect of receipt on policy.

54. Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker.

Loss and Abandonment.

Included and excluded losses.

55. 1. Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.
2. In particular:
- a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;
 - b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;
 - c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

Partial and total loss.

56. 1. A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.
2. A total loss may be either an actual total loss, or a constructive total loss.
3. Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.
4. Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.
5. Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

Actual total loss.

57. 1. Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.
2. In the case of an actual total loss no notice of abandonment need be given.

Missing ship.

58. Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

Effect of transhipment, &c.

59. Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and re-shipping the goods or other moveables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment.

Constructive total loss defined.

60. 1. Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.
2. In particular, there is a constructive total loss:
- a) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and α) it is unlikely that he can recover the ship or goods, as the case may be, or β) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or
 - b) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

- e) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

Effect of constructive total loss.

61. Where there is a constructive total loss the assured may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

Notice of abandonment.

62. 1. Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.
2. Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.
3. Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.
4. Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.
5. The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.
6. Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.
7. Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.
8. Notice of abandonment may be waived by the insurer.
9. Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

Effect of abandonment.

63. 1. Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.
2. Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred

after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

Partial Losses (including Salvage and General Average and Particular Charges).

Particular average loss.

64. 1. A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.
 2. Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average.

Salvage charges.

65. 1. Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.
 2. "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

General average loss.

66. 1. A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.
 2. There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.
 3. Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.
 4. Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.
 5. Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.
 6. In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connexion with the avoidance of, a peril insured against.
 7. Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

Measure of Indemnity.

Extent of liability of insurer for loss.

67. 1. The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.
 2. Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure

of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

Total loss.

68. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured:

1. If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy.
2. If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

Partial loss of ship.

69. Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:

1. Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty.
2. Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above.
3. Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

Partial loss of freight.

70. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

Partial loss of goods, merchandise, &c.

71. Where there is a partial loss of goods, merchandise, or other moveables, the measure of indemnity, subject to any express provision in the policy, is as follows:

1. Where part of the goods, merchandise or other moveables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy.
2. Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss.
3. Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value.
4. "Gross value" means the wholesale price or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. "Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers.

Apportionment of valuation.

72. 1. Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy.

The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

2. Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

General average contributions and salvage charges.

73. 1. Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.
2. Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle.

Liabilities to third parties.

74. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

General provisions as to measure of indemnity.

75. 1. Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.
2. Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

Particular average warranties.

76. 1. Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.
2. Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.
3. Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.
4. For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

Successive losses.

77. 1. Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

2. Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss.

Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

Suing and labouring clause.

78. 1. Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.
2. General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.
3. Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.
4. It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimizing a loss.

Rights of Insurer on Payment.

Right of subrogation.

79. 1. Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.
2. Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

Right of contribution.

80. 1. Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.
2. If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

Effect of under insurance.

81. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

Return of Premium.

Enforcement of return.

82. Where the premium, or a proportionate part thereof is, by this Act, declared to be returnable,—

- a) If already paid, it may be recovered by the assured from the insurer; and
- b) If unpaid, it may be retained by the assured or his agent.

Return by agreement.

83. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.

Return for failure of consideration.

84. 1. Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.
2. Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.
3. In particular—
- a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;
 - b) Where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable;

Provided that where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival;

- c) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering;
- d) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;
- e) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;
- f) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable;

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

Mutual Insurance.**Modification of Act in case of mutual insurance.**

85. 1. Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.
2. The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.
3. The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.
4. Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance.

Supplemental.**Ratification by assured.**

86. Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss.

Implied obligations varied by agreement or usage.

87. 1. Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.

2. The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

Reasonable time, &c. a question of fact.

88. Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact.

Slip as evidence.

89. Where there is a duly stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceeding.

Interpretation of terms.

90. In this Act, unless the context or subject-matter otherwise requires,—
 “Action” includes counter-claim and set-off;
 “Freight” includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money;
 “Moveables” means any moveable tangible property, other than the ship, and includes money, valuable securities, and other documents;
 “Policy” means a marine policy.

Savings.

91. 1. Nothing in this Act, or in any repeal effected thereby, shall affect—
 a) The provisions of the Stamp Act, 1891, or any enactment for the time being in force relating to the revenue;
 b) The provisions of the Companies Act, 1862, or any enactment amending or substituted for the same¹);
 c) The provisions of any statute not expressly repealed by this Act.
 2. The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

Repeals.

92. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in that schedule.

Commencement.

93. This Act shall come into operation on the first day of January one thousand nine hundred and seven.

Short title.

94. This Act may be cited as the Marine Insurance Act, 1906.

Schedules.

First Schedule.

Form of Policy.

Lloyd's S. G. policy.

BE IT KNOWN THAT

as well in

own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause

and them, and every of them, to be insured lost or not lost, at and from

Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the

whereof is master under God, for this present voyage,

or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; be-

¹) See now the Companies (Consolidation) Act, 1908, *infra*.

ginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship, upon the said ship, &c. and so shall continue and endure, during her abode there, upon the said ship, &c. And further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandises whatsoever shall be arrived at upon the said ship, &c., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, &c., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at

Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, &c., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

IN WITNESS whereof we, the assurers, have subscribed our names and sums assured in London.

Memorandum.

N.B. Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent., and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent. unless general, or the ship be stranded.

Rules for Construction of Policy.

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require:

Lost or not lost.

1. Where the subject-matter is insured "lost or not lost", and the loss has occurred before the contract is concluded, the risk attaches unless, at such time the assured was aware of the loss, and the insurer was not.

From.

2. Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.

At and from. Ship. — Freight.

3. a) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately;

b) If she be not at that place when the contract is concluded the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival;

c) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety;

d) Where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

From the loading thereof.

4. Where goods or other moveables are insured "from the loading thereof", the risk does not attach until such goods or moveables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

Safely landed.

5. Where the risk on goods or other moveables continues until they are "safely landed", they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

Touch and stay.

6. In the absence of any further license or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.

Perils of the seas.

7. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

Pirates.

8. The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.

Thieves.

9. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

Restraint of princes.

10. The term "arrests, &c., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

Barratry.

11. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

All other perils.

12. The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

Average unless general.

13. The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges."

Stranded.

14. Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

Ship.

15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.

Freight.

16. The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money.

Goods.

17. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

Second Schedule.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
19 Geo. 2. c. 37.	An Act to regulate insurance on ships belonging to the subjects of Great Britain, and on merchandizes or effects laden thereon.	The whole Act.
28 Geo. 3. c. 56.	An Act to repeal an Act made in the twenty-fifth year of the reign of his present Majesty, intituled "An Act for regulating Insurances " on Ships, and on goods, merchandizes, or " effects", and for substituting other provisions for the like purpose in lieu thereof.	The whole Act so far as it relates to marine insurance.
31 & 32 Vict. c. 86.	The Policies of Marine Assurance Act, 1868.	The whole Act.

Merchant Shipping Act, 1906.

6 Edw. 7.

Cap. XLVIII.

An Act to amend the Merchant Shipping Acts 1894 to 1900 (21st December 1906).

Part I. Safety (Sections 1—12) — *Part II. Passenger and Emigrant Ships* (Sections 13—24) — *Part III. Seamen's Food* (Sections 25—27) — *Part IV. Provisions as to Relief and Repatriation of Distressed Seamen, and Seamen left behind Abroad* — (Sections 28—49) — *Part V. Miscellaneous* (Sections 50—83).

Ships' names.

50. 1. The Board of Trade, in conjunction with the Commissioners of Customs, may make regulations enabling the Board of Trade to refuse the registry of any ship by the name by which it is proposed to register that ship if it is already the name of a registered British ship or a name so similar as to be calculated to deceive, and may by those regulations require notice to be given in such manner as may be directed by the regulations before

the name of the ship is marked on the ship, or before the name of the ship is entered in the register.

2. If the registry of a ship by the name by which it is proposed to register that ship is refused by the Board of Trade, or if any requirements of the regulations are not complied with in the case of any ship which it is proposed to register, that ship shall not be registered under the name proposed or until the regulations are complied with, as the case may be.

Power to inquire into the title of a registered ship to be registered.

51. 1. Where it appears to the Commissioners of Customs that there is any doubt as to the title of any ship registered as a British ship to be so registered, they may direct the registrar of the port of registry of the ship to require evidence to be given to his satisfaction that the ship is entitled to be registered as a British ship.
2. If within such time, not less than thirty days, as the Commissioners fix, satisfactory evidence of the title of the ship to be registered is not so given, the ship shall be subject to forfeiture under Part I. of the principal Act.
3. In the application of this section to a port in a British possession, the Governor of the British possession, and, in the application of this section to foreign ports of registry, the Board of Trade, shall be substituted for the Commissioners of Customs.

Provisions with respect to mortgages of ships sold to foreigners.

52. 1. Subsection (1) of section twenty-one of the principal Act shall be read as if the following words were inserted at the end of that subsection, "and the registry of the ship in that book shall be considered as closed except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein."
2. It is hereby declared that where the registry of a ship is considered as closed under subsection (1) of section twenty-one of the principal Act as amended by this section, or under subsection (10) of section forty-four of that Act, on account of a transfer to persons not qualified to be owners of British ships, any unsatisfied registered mortgage (including mortgages made under a certificate of mortgage) may, if the ship comes within the jurisdiction of any court in His Majesty's dominions which has jurisdiction to enforce the mortgage, or would have had such jurisdiction if the transfer had not been made, be enforced by that court notwithstanding the transfer, without prejudice, in cases where the ship has been sold under a judgment of a court, to the effect of that judgment.

Amendment of 57 & 58 Vict. c. 60. s. 48.

53. The following subsection shall be substituted for subsection (2) of section forty-eight of the principal Act:

2. If default is made in registering anew a ship, or in registering an alteration of a ship so altered as aforesaid, the owner of the ship shall be liable on summary conviction to a fine not exceeding one hundred pounds, and in addition to a fine not exceeding five pounds for every day during which the offence continues after conviction."

Calculation of tonnage of steamship for the purpose of limitation of liability.

69. For the purpose of the limitation under the Merchant Shipping Acts of the liability of owners of ships, docks, or canals, and of harbour authorities and conservancy authorities, the tonnage of a steamship shall be her registered tonnage, with the addition of any engine-room space deducted for the purpose of ascertaining that tonnage, and the words "registered tonnage with the addition of any engine-room space deducted for the purpose of ascertaining that tonnage" shall accordingly be substituted in paragraph (a) of subsection (2) of section five hundred and three of the principal Act for "gross tonnage without deduction on account of engine-room".

Liability of shipowners as respects ships launched but not registered.

70. The proviso to section one of the Merchant Shipping (Liability of Shipowners) Act, 1893, shall cease to have effect, but that section shall not be construed so as to extend section five hundred and two of the principal Act to the owners of any ship, or any share therein, after the ship has become a foreign ship.

Liability of charterer.

71. Sections five hundred and two to five hundred and nine of the principal Act shall be read so that the word "owner" shall be deemed to include any charterer to whom the ship is demised.

Part VI. Supplemental.**Construction of references to Merchant Shipping Acts.**

84. 1. In this Act the expression "principal Act" means the Merchant Shipping Act, 1894, and the expression "Merchant Shipping Acts" means the Merchant Shipping Acts, 1894 to 1900, and this Act.
2. Any reference in this Act to any provision of the Merchant Shipping Acts, 1894 to 1900, which has been amended by any subsequent Act or is amended by this Act, shall be construed as a reference to the provision as so amended.

Repeal.

85. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Short title and commencement.

86. 1. This Act may be cited as the Merchant Shipping Act, 1906, and shall be construed as one with the principal Act, and the Merchant Shipping Acts, 1894 to 1900, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1906.
2. This Act shall, save as otherwise expressly provided, come into operation on the first day of June nineteen hundred and seven.

Schedules.**First Schedule.****Scale of Provisions.****Second Schedule.****Enactments Repealed.**

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	Subsection (2) of section forty-eight, paragraph (b) of subsection (1) of section ninety-two, section one hundred and forty-four. Sections one hundred and eighty-six to one hundred and ninety-three; sections two hundred and seven, two hundred and eight, and two hundred and thirty-five.
57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	In subsection (2) of section two hundred and forty-six the words "and appoint and remove the superintendents, deputies, clerks, and servants," and in paragraph (a) of that subsection the words "the number of persons to be so appointed and the amount of their salaries and wages, and" and the word "other"; and paragraph (c) of that subsection; and in paragraph (d) of that subsection the words "and all persons and offices so appointed shall be subject to the immediate control of the Board of Trade and not of the local marine board of the port"; and in subsection (3) of the same section the words "and appoint and remove all the requisite superintendents, deputies, clerks, and servants."

Session and Chapter.	Short Title.	Extent of Repeal.
		<p>In section two hundred and sixty-seven the words "and every foreign steamship carrying passengers between places in the United Kingdom."</p> <p>Paragraph (3) of section two hundred and sixty-eight.</p> <p>Section two hundred and ninety-one.</p> <p>Section two hundred and ninety-nine.</p> <p>Paragraph (i) of section three hundred and twenty-eight; section three hundred and fifty-three; in subsection (1) of section four hundred and thirteen the words "of England or Ireland".</p> <p>Section four hundred and fifty-one as from the passing of this Act.</p> <p>In section four hundred and sixty-two, the words "has taken on board all or any part of her cargo," and the word "and" where it next occurs, and the words "whilst at that port"; in paragraph (a) of subsection (2) of section five hundred and three the words "gross tonnage without deduction on account of engine room."</p> <p>The Tenth, Eleventh, Twelfth, Thirteenth, and Fourteenth Schedules as from the dates on which regulations, scales, conditions, and forms are prescribed by the Board of Trade in substitution for those Schedules respectively.</p>
61 & 62 Vict. c. 14.	The Merchant Shipping (Liability of Shipowners) Act, 1898.	Section one, from "provided", to the end of the section.
61 & 62 Vict. c. 44.	The Merchant Shipping (Mercantile Marine Fund) Act, 1898.	Section four.

Limited Partnerships Act, 1907.

7. Edw. 7.

Cap. XXIV.

An Act to establish Limited Partnerships (28th August 1907).

Short title.

1. This Act may be cited for all purposes as the Limited Partnerships Act, 1907.

Commencement of Act.

2. This Act shall come into operation on the first day of January one thousand nine hundred and eight.

Interpretation of terms.

3. In the construction of this Act the following words and expressions shall have the meanings respectively assigned to them in this section, unless there be

something in the subject or context repugnant to such construction: — “Firm”, “firm name”, and “business” have the same meanings as in the Partnership Act, 1890: “General partner” shall mean any partner who is not a limited partner as defined by this Act.

Definition and constitution of limited partnership.

4. 1. From and after the commencement of this Act limited partnerships may be formed in the manner and subject to the conditions by this Act provided.
2. A limited partnership shall not consist, in the case of a partnership carrying on the business of banking, of more than ten persons, and, in the case of any other partnership, of more than twenty persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed.
3. A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.
4. A body corporate may be a limited partner.

Registration of limited partnership required.

5. Every limited partnership must be registered as such in accordance with the provisions of this Act, or in default thereof it shall be deemed to be a general partnership, and every limited partner shall be deemed to be a general partner.

Modifications of general law in case of limited partnerships.

6. 1. A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm: Provided that a limited partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon.

If a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner.

2. A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court unless the lunatic's share cannot be otherwise ascertained and realised.
3. In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners unless the court otherwise orders.
4. (*Repealed: 8 Edw. 7, c. 69, s. 286.*)
5. Subject to any agreement expressed or implied between the partners—
 - a) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;
 - b) A limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;
 - c) The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;
 - d) A person may be introduced as a partner without the consent of the existing limited partners;
 - e) A limited partner shall not be entitled to dissolve the partnership by notice.

Law as to private partnerships to apply where not excluded by this Act. 53 & 54 Vict. c. 39.

7. Subject to the provisions of this Act, the Partnership Act, 1890, and the rules of equity and of common law applicable to partnerships, except so far as

they are inconsistent with the express provisions of the last-mentioned Act, shall apply to limited partnerships.

Manner and particulars of registration.

8. The registration of a limited partnership shall be effected by sending by post or delivering to the registrar at the register office in that part of the United Kingdom in which the principal place of business of the limited partnership is situated or proposed to be situated a statement signed by the partners containing the following particulars:—

- a) The firm name;
- b) The general nature of the business;
- c) The principal place of business;
- d) The full name of each of the partners;
- e) The term, if any, for which the partnership is entered into, and the date of its commencement;
- f) A statement that the partnership is limited, and the description of every limited partner as such;
- g) The sum contributed by each limited partner, and whether paid in cash or how otherwise.

Registration of changes in partnerships.

9. 1. If during the continuance of a limited partnership any change is made or occurs in—

- a) The firm name;
- b) The general nature of the business;
- c) The principal place of business;
- d) The partners or the name of any partner;
- e) The term or character of the partnership;
- f) The sum contributed by any limited partner;
- g) The liability of any partner by reason of his becoming a limited instead of a general partner or a general instead of a limited partner;

A statement, signed by the firm, specifying the nature of the change shall within seven days be sent by post or delivered to the registrar at the register office in that part of the United Kingdom in which the partnership is registered.

2. If default is made in compliance with the requirements of this section each of the general partners shall on conviction under the Summary Jurisdiction Acts be liable to a fine not exceeding one pound for each day during which the default continues.

Advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner.

10. 1. Notice of any arrangement or transaction under which any person will cease to be a general partner in any firm, and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall be forthwith advertised in the Gazette, and until notice of the arrangement or transaction is so advertised, the arrangement or transaction shall, for the purposes of this Act, be deemed to be of no effect.

2. For the purposes of this section, the expression “the Gazette” means—

In the case of a limited partnership registered in England, the London Gazette;

In the case of a limited partnership registered in Scotland, the Edinburgh Gazette;

In the case of a limited partnership registered in Ireland, the Dublin Gazette.

Ad valorem stamp duty on contributions by limited partners.

11. The statement of the amount contributed by a limited partner, and a statement of any increase in that amount, sent to the registrar for registration under this Act, shall be charged with an ad valorem stamp duty of five shillings for every one hundred pounds, and any fraction of one hundred pounds over any multiple of one hundred pounds, of the amount so contributed, or of the increase of that

amount, as the case may be; and in default of payment of stamp duty thereon as herein required, the duty with interest thereon at the rate of five per cent. per annum from the date of delivery of such statement shall be a joint and several debt to His Majesty, recoverable from the partners, or any of them, in the said statements named, or, in the case of an increase, from all or any of the said partners whose discontinuance in the firm shall not, before the date of delivery of such statement of increase, have been duly notified to the registrar.

Making false returns to be misdemeanor.

12. Every one commits a misdemeanor, and shall be liable to imprisonment with hard labour for a term not exceeding two years, who makes, signs, sends, or delivers for the purpose of registration under this Act any false statement known by him to be false.

Registrar to file statement and issue certificate of registration.

13. On receiving any statement made in pursuance of this Act the registrar shall cause the same to be filed, and he shall send by post to the firm from whom such statement shall have been received a certificate of the registration thereof.

Register and index to be kept.

14. At each of the register offices herein-after referred to the registrar shall keep, in proper books to be provided for the purpose, a register and an index of all the limited partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships.

Registrar of joint stock companies to be registrar under Act.

15. The registrar of joint stock companies shall be the registrar of limited partnerships, and the several offices for the registration of joint stock companies in London, Edinburgh, and Dublin shall be the offices for the registration of limited partnerships carrying on business within those parts of the United Kingdom in which they are respectively situated.

Inspection of statements registered.

16. 1. Any person may inspect the statements filed by the registrar in the register offices aforesaid, and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the registration of any limited partnership, or a copy of or extract from any registered statement, to be certified by the registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as the Board of Trade may appoint, not exceeding two shillings for the certificate of registration, and not exceeding sixpence for each folio of seventy-two words, or in Scotland for each sheet of two hundred words.
2. A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars (whom it shall not be necessary to prove to be the registrar or assistant registrar) shall, in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence.

Power to Board of Trade to make rules.

17. The Board of Trade may make rules (but as to fees with the concurrence of the Treasury) concerning any of the following matters:

- a) The fees to be paid to the registrar under this Act, so that they do not exceed in the case of the original registration of a limited partnerships the sum of two pounds, and in any other case the sum of five shillings;
- b) The duties or additional duties to be performed by the registrar for the purposes of this Act;
- c) The performance by assistant registrars and other officers of acts by this Act required to be done by the registrar;
- d) The forms to be used for the purposes of this Act;
- e) Generally the conduct and regulation of registration under this Act and any matters incidental thereto.

The Limited Partnership Rules, 1907.

Dated December 17, 1907. Made under Section 17 of The Limited Partnerships Act, 1907.

1. "The Act" means the Limited Partnerships Act, 1907.

2. Whenever any act is by the Act directed to be done to or by the Registrar such act shall be done in England to or by the Registrar of Joint Stock Companies or in his absence to or by such person as the Board of Trade may for the time being authorise; in Scotland to or by the existing Registrar of Joint Stock Companies in Scotland; and in Ireland to or by the existing Assistant Registrar of Joint Stock Companies for Ireland or by such person as the Board of Trade may for the time being authorise in Scotland or Ireland in the absence of the Registrar; but in the event of the Board of Trade altering the constitution of the existing Joint Stock Companies Registry Office such act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the principal place of business of the limited partnership to be registered as the Board of Trade may appoint.

3. The fees to be paid to the Registrar under the Act shall be as follow:—

- a) on the original registration of a limited partnership the sum of two pounds;
- b) on the registration of a statement of any change within the meaning of Section 9 (1) of the Act occurring during the continuance of a limited partnership the sum of five shillings;
- c) by any person inspecting the statements filed by the Registrar in the Register Office the sum of one shilling for each inspection;
- d) by any person requiring a Certificate of the registration of any limited partnership or a certified copy of or extract from any registered statement the sum of two shillings for each certificate and for such certified copy or extract the sum of sixpence for each folio of seventy-two words or in Scotland for each sheet of two hundred words.

4. The forms in the Appendix hereto with such variations as the circumstances of each case may require shall be the forms to be used for the purposes of the Act.

D. Lloyd George.

Board of Trade, December 17th, 1907.

Approved, so far as relating to Fees.

Joseph A. Pease.

J. H. Whitley.

Appendix.

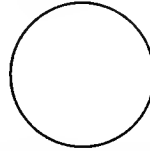
Forms to be used for the purposes of the Act.

No. of Certificate.

Form No. L. P. 1.

Limited Partnerships Act, 1907.

Application for Registration of a
Limited Partnership.



A 2£ fee stamp
must be
impressed here.

We, the undersigned, being the partners of the firm hereby
apply for registration as a limited partnership, and for that purpose supply the following
particulars, pursuant to Section 8 of the Limited Partnerships Act, 1907:

The }
Firm }
Name. }

The General }
Nature }
of the }
Business. }

The Principal }
Place of }
Business. }

The Term, if any for } Term (if any) years.
which the Partnership }
is entered into, and } If no definite term,
the date of its com- } the conditions of
mencement. } existence of the part-
nership. }

Date of Commencement:

The Partnership is Limited.

Presented or forwarded for filing by:

Full Name and Address of each of the Partners.

*) Amount contributed by each Limited
Partner, and whether paid in cash, or how
otherwise.

General Partners.

Limited Partners.

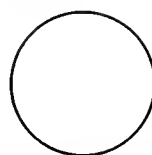
Signatures of all
the Partners. }

Date

*) A separate statement (Form L.P. 3) of the amounts contributed must accompany this
application, for the purpose of payment of capital duty, pursuant to Section 11 of the Act.

No. of Certificate.

Form No. L.P. 2.

Limited Partnerships Act, 1907.**Notice of Change in the Limited Partnership.**

A 5s. fee stamp
must be
impressed here.

*).....

Notice is hereby given, pursuant to Section 9 of the Limited Partnerships Act, 1907, that the changes specified below have occurred in this limited partnership—

a) Change in { Previous name
the Firm {
Name. { New name

b) Change { General nature {
in the { of business {
General { as previously {
Nature { carried on. {
of the {
Business. { General nature {
{ of business as {
{ now carried on. {

c) Change { Previous place of business
in the {
Principal {
Place of {
Business. { New place of business

Presented or forwarded for filing by

d) Change {
in the {
Partners, {
or the Name {
of {
any Partner. {

Note. — Changes brought about by death, by transfer of interests, by increase in the number of partners, or by change of name of any partner, must be here notified.

e) Change in { Previous term (if any), {
the Term { but, if no definite term, {
or Charac- { then the conditions under {
ter of the { which the partnership was {
Partner- { constituted. {
ship. { New term (if any), but, {
{ if no definite term, then {
{ the conditions under which {
{ the partnership is now con- {
{ stituted. {

f) Change in {
the Sum {
Contribut- {
ed by any {
Limited {
Partner. {

*) Here insert name of firm or partnership.

Note. — Any variation in the sum contributed by any limited partner must be here stated. A statement (Form L. P. 4) of any increase in the amount of the partnership capital, whether arising from an increase of contributions, or from introduction of fresh partners, must be made on a separate form, for the purpose of payment of capital duty, pursuant to Section 11 of the Act.

g) Change in the Liability of any Partner by reason of his becoming a Limited instead of a General or a General instead of a Limited Partner. }

Signature of firm

Date

Note. — Each change must be entered in the proper division a), b), c), d), e), f) or g), as the case may be.

Provision is made in this form for notifying all the changes required by the Act to be notified, but it will frequently happen that only one item of change, such as change in the principal place of business, for instance, has to be notified. In any such case, the word "Nil" should be inserted in the other divisions.

The statement must be signed at the end by the firm, and delivered for registration within seven days of the change or changes taking place.

No. of Certificate

Form No. L. P. 3.

Limited Partnerships Act, 1907.

*)

Statement of the Capital contributed by Limited Partners made pursuant to Section 11 of the Limited Partnerships Act, 1907.

The amounts contributed in cash or otherwise by the Limited Partners of the firm*)
..... are as follows:

Names and Addresses of Limited Partners.	Amounts contributed in cash or otherwise (if otherwise than in cash, that fact with particulars must be stated).
--	--

Signature of a General Partner

Date

*) Here insert name of firm or Limited Partnership.

Note. — The Stamp Duty on the Nominal Capital is Five Shillings for every £100, or fraction of £100, contributed by each Limited Partner.

This statement must accompany the application Form L. P. 1 for registration of a Limited Partnership.

Presented or forwarded for registration by

No. of Certificate

Form No. L. P. 4.

Limited Partnerships Act, 1907.

*)

Statement of Increase of Capital contributed in cash, or otherwise, by limited partners, pursuant to Section 11 of the Limited Partnerships Act, 1907.

The Capital of the Limited Partnership*)
has been increased by the addition thereto of sums contributed, in cash or otherwise, by the limited partners, as follows:

Names of Limited Partners	Increase or additional sum now contributed. (If otherwise than in cash, that fact, with particulars, must be stated.)	Total amount contributed. (If otherwise, than in cash, that fact, with particulars, must be stated.)

Signature of a General Partner

Date

Notes. — In the case of a new Limited Partner, the first and third columns only will be used.

The Stamp Duty on an Increase of Capital is Five Shillings for every £100, or fraction of £100, contributed by each Limited Partner.

This Statement is to be filed within 7 days of the increase taking place.

Presented or forwarded for registration by

*) Here insert name of firm or Limited Partnership.

Certificate of Registration of a Limited Partnership.

I Hereby Certify, That the firm
 having lodged a Statement of parti-
 culars pursuant to Section 8 of the Limited Partnerships Act, 1907, is this day registered
 as a limited partnership.

Given under my hand at London this day of
 One Thousand Nine Hundred and

Fee Stamps £

Stamp Duty on Capital £

Registrar of Limited Partnerships.

Pursuant to Section 10 of the Limited Partnerships Act, 1907.

Notice is hereby given that under an arrangement entered into on the
 day of 190 , ceases to be a General
 Partner and becomes a Limited Partner in the firm of carrying
 on business as at

Dated this day of 190 .

Signature

Witness to the signature of

(Name)

(Address)

Pursuant to Section 10 of the Limited Partnerships Act, 1907.

Notice is hereby given that under an arrangement entered into on the
 day of , 190 , of the firm of
 carrying on business as at has assigned his share
 as a Limited Partner in the above-named firm to

Dated this day of , 190 .

Signature

Witness to the Signature of

(Name)

(Address)

The Patents and Designs Act, 1907.

7 Edw. VII.

Cap. XXIX.

Patent Office.

62. 1. The Treasury may continue to provide for the purposes of this Act and the Trade Marks Act, 1905, an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.
2. The Patent Office shall be under the immediate control of the comptroller, who shall act under the superintendence and direction of the Board of Trade.
3. Any act or thing directed to be done by or to the comptroller may be done by or to any officer authorised by the Board of Trade.
4. Rules under this Act may provide for the establishment of branch offices for designs at Manchester or elsewhere, and for any document or thing required by this Act to be sent to or done at the Patent Office being sent to or done at any branch office which may be established.

Officers and clerks.

63. 1. There shall continue to be a comptroller-general of patents, designs, and trade marks, and the Board of Trade may, subject to the approval of the Treasury, appoint the comptroller, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may remove any of those officers and clerks.
2. The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and those salaries and the other expenses of the execution of this Act and the Trade Marks Act, 1905, shall continue to be paid out of money provided by Parliament.

Seal of Patent Office.

64. Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence.

International and Colonial Arrangements.

91. 1. If His Majesty is pleased to make any arrangement with the government of any foreign state for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any invention, design, or trade mark in that state shall be entitled to a patent for his invention or to registration of his design or trade mark under this Act or the Trade Marks Act, 1905, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign state.

Provided that—

- a) The application is made, in the case of a patent within twelve months, and in the case of a design or trade mark within four months, from the application for protection in the foreign state; and
- b) Nothing in this section shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the actual date on which his complete specification is accepted, or his design or trade mark is registered, in this country.
2. The patent granted for the invention or the registration of a design or trade mark shall not be invalidated—
 - a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention; or
 - b) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design; or
 - c) in the case of a trade mark, by reason only of the use of the trade mark, in the United Kingdom or the Isle of Man during the period specified in this section as that within which the application may be made.
3. The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act or the Trade Marks Act, 1905: Provided that—

- a) In the case of patents the application shall be accompanied by a complete specification, which, if it is not accepted within the twelve months from the application for protection in the foreign state, shall with the drawings (if any) be open to public inspection at the expiration of that period; and
 - b) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under the Trade Marks Act, 1905.
4. The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares them to be applicable, and so long only in the case of each state as the Order in Council continues in force with respect to that state.
 5. Where it is made to appear to His Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for His Majesty, by Order in Council, to apply the provisions of this section to that possession, with such variations or additions, if any, as may be stated in the Order.

The Finance Act, 1908.

8 Edw. VII.

Cap. XVI.

Part II. Stamps.

Reduction of stamp duty on marine policies for a voyage.

5. As from the 1st day of January 1909, a penny shall be substituted for threepence as the stamp duty chargeable under paragraph (2) (a) of the heading Policy of Sea Insurance in the First Schedule to the Stamp Act 1891, on a policy of sea insurance for or upon any voyage in respect of every full sum of £100, and also any fractional part of £100, insured by the policy.

The Companies (Consolidation) Act, 1908.

8 Edw. VII.

Cap. LXIX.

An Act to consolidate the Companies Act, 1862, and the Acts amending it (21st December 1908).

Part I. Constitution and Incorporation.

Prohibition of Large Partnerships.

Prohibition of partnerships exceeding certain number.

1. 1. No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.
2. No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

Memorandum of Association.

Mode of forming incorporated company.

2. Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Act, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

- i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or
- iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

Memorandum of company limited by shares.

3. In the case of a company limited by shares:

1. The memorandum must state —
 - i) The name of the company, with "Limited" as the last word in its name;
 - ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
 - iii) The objects of the company;
 - iv) That the liability of the members is limited;
 - v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount.
2. No subscriber of the memorandum may take less than one share.
3. Each subscriber must write opposite to his name the number of shares he takes.

Memorandum of company limited by guarantee.

4. In the case of a company limited by guarantee:

1. The memorandum must state —
 - i) The name of the company, with "Limited" as the last word in its name;
 - ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
 - iii) The objects of the company;
 - iv) That the liability of the members is limited;
 - v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
2. If the company has a share capital —
 - i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
 - ii) No subscriber of the memorandum may take less than one share;
 - iii) Each subscriber must write opposite to his name the number of shares he takes.

Memorandum of unlimited company.

5. In the case of an unlimited company:

1. The memorandum must state —
 - i) The name of the company;
 - ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
 - iii) The objects of the company.

2. If the company has a share capital;
 - i) No subscriber of the memorandum may take less than one share;
 - b) Each subscriber must write opposite to his name the number of shares he takes.

Stamp and signature of memorandum.

6. The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

Restriction on alteration of memorandum.

7. A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

Name of company and change of name.

8. 1. A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.
2. If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.
3. Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.
4. Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.
5. The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Alteration of objects of company.

9. 1. Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it —
 - a) To carry on its business more economically or more efficiently; or
 - b) To attain its main purpose by new or improved means; or
 - c) To enlarge or change the local area of its operations; or
 - d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
 - e) To restrict or abandon any of the objects specified in the memorandum.
2. The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.
3. Before confirming the alteration the court must be satisfied —
 - a) That sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and
 - b) That, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the court:

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

4. The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.
5. The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.
6. An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company. — The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.
7. If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

Articles of Association.

Registration of articles.

10. 1. There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.
2. Articles of association may adopt all or any of the regulations contained in Table A. in the First Schedule to this Act.
3. In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.
4. In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

Application of Table A.

11. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form, stamp, and signature of articles.

12. Articles must —

- a) Be printed;
- b) Be divided into paragraphs numbered consecutively;
- c) Bear the same stamp as if they were contained in a deed; and
- d) Be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

Alteration of articles by special resolution.

13. 1. Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.
2. The power of altering articles under this section shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

General Provisions.**Effect of memorandum and articles.**

14. 1. The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.
2. All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England and Ireland be of the nature of a specialty debt.

Registration of memorandum and articles.

15. The memorandum and the articles (if any) shall be delivered to the registrar of companies for that part of the United Kingdom in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

Effect of registration.

16. 1. On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.
2. From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Conclusiveness of certificate of incorporation.

17. 1. A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.
2. A statutory declaration by a solicitor of the High Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Copies of memorandum and articles to be given to members.

18. 1. Every company shall send to every member, at his request, and on payment of one shilling or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).
2. If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding one pound.

Associations not for Profit.

Restriction on charitable and other companies holding land.

19. A company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land; but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

Power to dispense with "Limited" in name of charitable and other companies.

20. 1. Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.
2. A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.
3. The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the registrar of companies.
4. A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section: — Provided that before a licence is so revoked the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

Companies limited by Guarantee.

Provision as to companies limited by guarantee.

21. 1. In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.
2. For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the first day of January, nineteen hundred and one, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Part II. Distribution and Reduction of Share Capital, Registration of Unlimited Company as Limited and Unlimited Liability of Directors.

Distribution of Share Capital.

Nature of shares.

22. 1. The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

2. Each share in a company having a share capital shall be distinguished by its appropriate number.

Certificate of shares or stock.

23. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *primâ facie* evidence of the title of the member to the shares or stock.

Definition of member.

24. 1. The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.
2. Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Register of members.

25. 1. Every company shall keep in one or more books a register of its members, and enter therein the following particulars:
 - i) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;
 - ii) The date at which each person was entered in the register as a member;
 - iii) The date at which any person ceased to be a member.
2. If a company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Annual list of members and summary.

26. 1. Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.
2. The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:
 - a) The amount of the share capital of the company, and the number of the shares into which it is divided;
 - b) The number of shares taken from the commencement of the company up to the date of the return;
 - c) The amount called up on each share;
 - d) The total amount of calls received;
 - e) The total amount of calls unpaid;
 - f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;
 - g) The total number of shares forfeited;
 - h) The total amount of shares or stock for which share warrants are outstanding at the date of the return;
 - i) The total amount of share warrants issued and surrendered respectively since the date of the last return;
 - k) The number of shares or amount of stock comprised in each share warrant;

- l) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called; and
 - m) The total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight.
3. The summary must also (except where the company is a private company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss.
 4. The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the company must forthwith forward to the registrar of companies a copy signed by the manager or by the secretary of the company.
 5. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Trusts not to be entered on register.

27. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England or Ireland.

Registration of transfer at request of transferor.

28. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Transfer by personal representative.

29. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Inspection of register of members.

30. 1. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.
2. Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.
3. If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like

penalty; and, as respects companies registered in England or Ireland, any judge of the High Court, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

Power to close register.

31. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power of court to rectify register.

32. 1. If —

- a) The name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
 - b) Default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member — the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.
2. The application may be made, as respects companies registered in England or Ireland, by motion in the High Court, or by application to a judge of the High Court sitting in chambers, or by application to the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, and, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said courts may respectively direct; and the court may either refuse the application, or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved.
3. On any application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.
4. In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

Register to be evidence.

33. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Power for company to keep colonial register.

34. 1. A company having a share capital, whose objects comprise the transaction of business in a colony, may, if so authorised by its articles, cause to be kept in any colony in which it transacts business a branch register of members resident in that colony (in this Act called a colonial register).
2. The company shall give to the registrar of companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.
3. For the purpose of the provisions of this Act relating to colonial registers the term "colony" includes British India and the Commonwealth of Australia.

Regulations as to colonial register.

35. 1. A colonial register shall be deemed to be part of the company's register of members (in this and the next following section called the principal register).
2. It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent court in the colony may exercise the same jurisdiction of rectifying the register as is

under this Act exercisable by the High Court, and that the offences of refusing inspection or copies of a colonial register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction.

3. The company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its colonial register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.
4. Subject to the provisions of this section with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.
5. The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the principal register.
6. Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of colonial registers.

Stamp duties in case of shares registered in colonial registers.

36. In relation to stamp duties the following provisions shall have effect:
 - a) An instrument of transfer of a share registered in a colonial register shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from British stamp duty;
 - b) On the death of a member registered in a colonial register, the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far as relates to British duties, to be part of his estate and effects situate in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register.

Issue and effect of share warrants to bearer.

37. 1. A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.
2. A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.
3. The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.
4. The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.
5. On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:

- i) The fact of the issue of the warrant;
 - ii) A statement of the shares or stock included in the warrant, distinguishing each share by its number; and
 - iii) The date of the issue of the warrant.
6. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

Forgery, personation, unlawfully engraving plates, &c.

38. 1. If any person —

- i) With intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or
- ii) Falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, —

he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

2. If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

Power of company to arrange for different amounts being paid on shares.

39. A company, if so authorised by its articles, may do any one or more of the following things; namely:

- 1. Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares.
- 2. Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.
- 3. Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Power to return accumulated profits in reduction of paid-up share capital.

40. 1. When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.
2. The resolution shall not take effect until a memorandum, showing the particulars required by this Act in the case of a reduction of share capital,

- has been produced to and registered by the registrar of companies, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section.
3. On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorised for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.
 4. The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.
 5. On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.
 6. After any reduction of share capital under this section the company shall specify in the annual list of members required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

Power of company limited by shares to alter its share capital.

41. 1. A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may —
 - a) Increase its share capital by the issue of new shares of such amount as it thinks expedient;
 - b) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - c) Convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
 - d) Subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - e) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
2. The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution.
3. Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration. — If a company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

4. A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.

42. Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the registrar of companies of the consolidation, division, conversion, or re-conversion specifying the shares consolidated, divided, or converted, or the stock reconverted.

Effect of conversion of shares into stock.

43. Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar of companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares herein-before required by this Act.

Notice of increase of share capital or of members.

44. 1. Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the registrar of companies, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.
2. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Reorganisation of share capital.

45. 1. A company limited by shares may, by special resolution confirmed by an order of the court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes: Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.
2. Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

Reduction of Share Capital.

Special resolution for reduction of share capital.

46. 1. Subject to confirmation by the court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may —
- a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

- b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
 - c) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, — and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
2. A special resolution under this section is in this Act called a resolution for reducing share capital.

Application to court for confirming order.

47. Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction.

Addition to name of company of "and reduced."

48. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company: Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Objections by creditors, and settlement of list of objecting creditors.

49. 1. Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.
2. The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.
3. Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount; (that is to say,)
- i) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
 - ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

Order confirming reduction.

50. The court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

Registration of order and minute of reduction.

51. 1. The registrar of companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.
2. On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.
3. Notice of the registration shall be published in such manner as the court may direct.
4. The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Minute to form part of memorandum.

52. 1. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration.
2. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares.

53. A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute: Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then —

- i) Every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and
- ii) If the company is wound up, the court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

54. If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanor.

Publication of reasons for reduction.

55. In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information

in regard thereto as the court may think expedient with a view to give proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

56. A company limited by guarantee and registered on or after the first day of January nineteen hundred and one, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Registration of Unlimited Company as Limited.

Registration of unlimited company as limited.

57. 1. Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company, may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part VII. of this Act in the case of a company registered in pursuance of that Part.
2. On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the Company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited Company.

Power of unlimited company to provide for reserve share capital on registration.

58. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely:—

- a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- b) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

Reserve liability of limited company.

59. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

Limited company may have directors with unlimited liability.

60. 1. In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.
2. In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, (if any) and the member who proposes a person for election or appointment to the office of director

or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

3. If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited.

61. 1. A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.
2. Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.
3. If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Part III. Management and Administration.

Office and Name.

Registered office of company.

62. 1. Every company shall have a registered office to which all communications and notices may be addressed.
2. Notice of the situation of the registered office, and of any change therein, shall be given to the registrar of companies, who shall record the same.
3. If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which it so carries on business.

Publication of name by a limited company.

63. 1. Every limited company —
 - a) Shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
 - b) Shall have its name engraved in legible characters on its seal;
 - c) Shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.
2. If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding five pounds for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.
3. If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice,

receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Meetings and Proceedings.

Annual general meeting.

64. 1. A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.
2. When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

First statutory meeting of company.

65. 1. Every company limited by shares and registered on or after the first day of January nineteen hundred and one shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.
2. The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.
3. The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state —
- a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
 - b) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
 - c) An abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
 - d) The names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and
 - e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.
4. The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.
5. The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the sending thereof to the members of the company.
6. The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

7. The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.
8. The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.
9. If a petition is presented to the court in manner provided by Part IV. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.
10. The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

Convening of extraordinary general meeting on requisition.

66. 1. Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.
2. The requisition must state the objects of the meeting, and must be signed by requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.
3. If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.
4. If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.
5. Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

Provisions as to meetings and votes.

67. In default of, and subject to, any regulations in the articles:
- i) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule to this Act;
 - ii) Five members may call a meeting;
 - iii) Any person elected by the members present at a meeting may be chairman thereof;
 - iv) Every member shall have one vote.

Representation of companies at meetings of other companies of which they are members.

68. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

Definitions of extraordinary and special resolution.

69. 1. A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members entitled to

vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution has been duly given.

2. A resolution shall be a special resolution when it has been —
 - a) Passed in manner required for the passing of an extraordinary resolution; and
 - b) Confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.
3. At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
4. At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.
5. When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.
6. For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

Registration and copies of special resolutions.

70. 1. A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.
2. Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.
3. Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.
4. If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.
5. If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.
6. Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Minutes of proceedings of meetings and directors.

71. 1. Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose.
2. Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.
3. Until the contrary is proved, every general meeting of the company or meeting of directors or manager in respect of the proceedings whereof minutes have

been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators, shall be deemed to be valid.

Appointment, Qualification, &c. of Directors.

Restrictions on appointment or advertisement of director.

- 72.** 1. A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of a company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing —
- i) Signed and filed with the registrar of companies a consent in writing to act as such director; and
 - ii) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).
2. On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.
3. This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Qualification of director.

- 73.** 1. Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.
2. The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.
3. If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Validity of acts of directors.

- 74.** The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

List of directors to be sent to registrar.

- 75.** 1. Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the registrar of companies a copy thereof, and from time to time notify to the registrar any change among its directors or managers.
2. If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contracts, &c.

Form of contracts.

- 76.** 1. Contracts on behalf of a company may be made as follows; (that is to say):
- i) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged;
 - ii) Any contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;
 - iii) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.
2. All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators as the case may be.
3. Any deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in terms of the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be equally binding whether attested by witnesses or not.

Bills of exchange and promissory notes.

77. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of the company by any person acting under its authority.

Execution of deeds abroad.

78. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad.

- 79.** 1. A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.
2. A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place not situate in the United Kingdom, to affix the same to any deed or other document to which the company is party in that territory, district, or place.
3. The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.
4. The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

5. A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Prospectus.

Filing of prospectus.

80. 1. Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.
2. A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar of companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.
3. The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.
4. Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.
5. If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

Specific requirements as to particulars of prospectus.

81. 1. Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company, must state —
 - a) The contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and
 - b) The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and
 - c) The names, descriptions, and addresses of the directors or proposed directors; and
 - d) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and
 - e) The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and
 - f) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and
 - g) The amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and

- h) The amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and
 - i) The amount or estimated amount of preliminary expenses; and
 - j) The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and
 - k) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and
 - l) The names and addresses of the auditors (if any) of the company; and
 - m) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company; and
 - n) Where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.
2. For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where —
 - a) The purchase money is not fully paid at date of issue of the prospectus; or
 - b) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
 - c) The contract depends for its validity or fulfilment on the result of that issue.
 3. Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression “vendor” included the lessor, and the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.
 4. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.
 5. Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.
 6. In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that —
 - a) As regards any matter not disclosed, he was not cognisant thereof; or
 - b) The non-compliance arose from an honest mistake of fact on his part: Provided that in the event of non-compliance with the requirements contained in paragraph (m) of subsection (1) of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.
 7. This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid this section shall apply to any prospectus, whether issued on or with reference to the formation of a company or subsequently.

8. The requirements of this section as to the memorandum and the qualification, remuneration, and interest of directors, the names, description, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.
9. Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Obligations of companies where no prospectus is issued.

82. 1. A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar of companies a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule to this Act.
2. This section shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

83. A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

Liability for statements in prospectus.

84. 1. Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved —
 - a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
 - b) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the reports or valuation. Provided that the director, person named as director, promoter, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and
 - c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document: or unless it is proved —
 - i) That having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

- ii) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
 - iii) That after the issue of prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.
2. Where a company existing on the eighteenth day of August one thousand eight hundred and ninety, has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.
 3. Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.
 4. Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.
 5. For the purposes of this section: — The expression “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company: — The expression “expert” includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Allotment.

Restriction as to allotment.

85. 1. No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely:
- a) The amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or
 - b) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription, — has been subscribed, and the sum payable on application for the amount so fixed and named, and for the whole amount offered for subscription, has been paid to and received by the company.
2. The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.
 3. The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.
 4. If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally

liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day: — Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

5. Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.
6. This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.
7. In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say:
 - a) The amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or
 - b) If no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,
 has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

This subsection shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

Effect of Irregular allotment.

86. 1. An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.
2. If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of the last foregoing section with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Restrictions on commencement of business.

87. 1. A company shall not commence any business or exercise any borrowing powers unless:
 - a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
 - b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and
 - c) There has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and
 - d) In the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.
2. The registrar of companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled: — Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

3. Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.
4. Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.
5. If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.
6. Nothing in this section shall apply to a private company, or to a company registered before the first day of January nineteen hundred and one, or to a company registered before the first day of July nineteen hundred and eight which does not issue a prospectus inviting the public to subscribe for its shares.

Return as to allotments.

88. 1. Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar of companies —
- a) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and
 - b) In the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.
2. Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the registrar of companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.
3. If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues: Provided that, in case of default in filing with the registrar of companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

Commissions and Discounts.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.

89. 1. It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is —

- a) In the case of shares offered to the public for subscription, disclosed in the prospectus; or
 - b) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar of companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.
2. Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.
 3. Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Statement in balance sheet as to commissions and discounts.

90. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

Power of company to pay interest out of capital in certain cases.

91. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant: — Provided that:

1. No such payment shall be made unless the same is authorised by the articles or by special resolution.
2. No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade.
3. Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry.
4. The payment shall be made only for such period as may be determined by the Board of Trade; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided.
5. The rate of interest shall in no case exceed four per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council.
6. The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.
7. The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

8. Nothing in this section shall affect any company to which the Indian Railways Act 1894, as amended by any subsequent enactment, applies.

Certificates of Shares, &c.

Limitation of time for issue of certificates.

92. 1. Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.
2. If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Information as to Mortgages, Charges, &c.

Registration of mortgages and charges in England and Ireland.

93. 1. Every mortgage or charge created after the first day of July nineteen hundred and eight by a company registered in England or Ireland and being either —
- a) A mortgage or charge for the purpose of securing any issue of debentures; or
 - b) A mortgage or charge on uncalled share capital of the company; or
 - c) A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
 - d) A mortgage or charge on any land, wherever situate, or any interest therein; or
 - e) A mortgage or charge on any book debts of the company; or
 - f) A floating charge on the undertaking or property of the company, shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable: — Provided that —
- i) In the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and
 - ii) Where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and
 - iii) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for

the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and

- iv) The holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.
2. The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.
3. Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars; —
 - a) The total amount secured by the whole series; and
 - b) The dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
 - c) A general description of the property charged; and
 - d) The names of the trustees, if any, for the debenture holders; together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register: — Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.
4. Where any commission, allowance, or discount has been paid[§] or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued: — Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.
5. The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.
6. The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered: — Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.
7. It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein. — Where

the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

8. The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.
9. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Registration of enforcement of security.

94. 1. If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.
2. If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Filing of accounts of receivers and managers.

95. 1. Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.
2. Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

Rectification of register of mortgages.

96. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

Entry of satisfaction.

97. The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

Index to register of mortgages and charges.

98. The registrar of companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Penalties.

99. 1. If any company makes default in sending to the registrar of companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person,

- the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.
2. Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.
 3. If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

Company's register of mortgages.

100. 1. Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.
2. If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

101. 1. The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.
2. If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in England or Ireland, any judge of the High Court sitting in chambers, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.

102. 1. Every register of holders of debentures of a company shall, except when closed in accordance with the articles, during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.
2. A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less

sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

3. If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding *five pounds*, and to a further fine not exceeding *two pounds* for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

Debentures and Floating Charges.

Perpetual debentures.

103. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to re-issue redeemed debentures in certain cases.

104. 1. Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns) shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.
2. Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.
3. Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the Company having ceased to be in debit whilst the debentures remained so deposited.
4. The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued: — Provided that any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.
5. Nothing in this section shall prejudice —
 - a) The operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March nineteen hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from

any such judgment or order shall be decided as if this Act had not been passed; or

- b) Any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Specific performance of contract to subscribe for debentures.

105. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Validity of debentures to bearer in Scotland.

106. Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

- 107. 1.** Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
- 2.** The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- 3.** Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule.

- 108. 1.** Every company being a limited banking company or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked C. in the First Schedule to this Act, or as near thereto as circumstances will admit.
- 2.** A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.
- 3.** Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.
- 4.** If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.
- 5.** For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.
- 6.** This section shall not apply to any life assurance company nor any other assurance company to which the provisions of the Life Assurance Companies Acts, 1870 to 1872¹⁾ (33 & 34 Vict. c. 61. 34 & 35 Vict. c. 58. 35 & 36 Vict. c. 41), as to the annual statements to be made by such a company, apply with or without modifications, if the company complies with those provisions.

¹⁾ See now 9 Edw. VII c. 49, *infra*.

Inspection and Audit.

Investigation of affairs of company by Board of Trade inspectors.

109. 1. The Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct —
- i) In the case of a banking company having a share capital, on the application of members holding not less than one third of the shares issued;
 - ii) In the case of any other company having a share capital, on the application of members holding not less than one tenth of the shares issued;
 - iii) In the case of a company not having a share capital, on the application of not less than one fifth in number of the persons on the company's register of members.
2. The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring the investigation; and the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.
3. It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.
4. An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.
5. If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding five pounds in respect of each offence.
6. On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them. — The report shall be written or printed, as the Board direct.
7. All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Board of Trade direct the same to be paid by the company, which the Board is hereby authorised to do.

Power of company to appoint inspectors.

110. 1. A company may by special resolution appoint inspectors to investigate its affairs.
2. Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.
3. Officers and agents of the company shall incur the like penalties, in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade.

Report of inspectors to be evidence.

111. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Appointment and remuneration of auditors.

112. 1. Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.
2. If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.
3. A director or officer of the company shall not be capable of being appointed auditor of the company.

4. A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting: — Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.
5. The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.
6. The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.
7. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

Powers and duties of auditors.

113. 1. Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.
2. The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state —
 - a) whether or not they have obtained all the information and explanations they have required; and
 - b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.
3. The balance sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder. — Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.
4. If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

5. In the case of a banking company registered after the fifteenth day of August eighteen hundred and seventy-nine —
 - a) If the company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the United Kingdom; and
 - b) The balance sheet must be signed by the secretary or manager (if any) and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

Rights of preference shareholders, &c. as to receipt and inspection of reports, &c.

114. 1. Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.
2. This section shall not apply to a private company, nor to a company registered before the first day of July nineteen hundred and eight.

Carrying on Business with less than the legal Minimum of Members.

Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

115. If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same, without joinder in the action of any other member.

Service and Authentication of Documents.

Service of documents on company.

116. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Authentication of documents.

117. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

Tables and Forms.

Application and alteration of tables and forms.

118. 1. The forms in the Third Schedule to this Act or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.
2. The Board of Trade may alter any of the tables and forms in the First Schedule to this Act, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and may alter or add to the forms in the said Third Schedule.
3. Any such table or form, when altered, shall be published in the London Gazette, and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A. in the said First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

Arbitrations.

Arbitration between companies and others.

119. 1. A company may by writing under its common seal agree to refer and may refer to arbitration, in accordance with the Railway Companies Arbitration

Act, 1859, any existing or future difference between itself and any other company or person.

2. Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.
3. All the provisions of the Railway Companies Arbitration Act, 1859, shall apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of those provisions "the companies" shall include companies under this Act.

Power to Compromise.

Power to compromise with creditors and members.

120. 1. Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.
2. If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.
3. In this section the expression "company" means any company liable to be wound up under this Act.

Meaning of "Private Company."

Meaning of "private company."

121. 1. For the purposes of this Act the expression "private company" means a company which by its articles —
 - a) Restricts the right to transfer its shares; and
 - b) Limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and
 - c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.
2. A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the registrar of companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.
3. Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

Part IV. Winding up.

Preliminary.

Modes of winding up.

122. 1. The winding up of a company may be either —
 - a) By the court; or
 - b) Voluntary; or
 - c) Subject to the supervision of the court.
2. The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

Liability as contributories of present and past members.

123. 1. In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—
- i) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
 - ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
 - iii) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
 - iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
 - v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
 - vi) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
 - vii) A sum due to any member of a company, in his character of a member by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.
2. In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: Provided that —
- i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
 - ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
 - iii) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.
3. In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

124. The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

125. The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member.

126. 1. If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.
2. Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.
3. If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment there out of the money due.

Contributories in case of bankruptcy of member.

127. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then:

1. His trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
2. There may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as to married women.

128. 1. The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.
2. Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

Winding up by Court.**Circumstances in which company may be wound up by court.**

129. A company may be wound up by the court —

- i) If the company has by special resolution resolved that the company be wound up by the court;
- ii) If default is made in filing the statutory report or in holding the statutory meeting;
- iii) If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- iv) If the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;
- v) If the company is unable to pay its debts;
- vi) If the court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

130. A company shall be deemed to be unable to pay its debts —

- i) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- ii) If in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company, is returned unsatisfied in whole or in part; or
- iii) If, in Scotland, the inducie of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or
- iv) If it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Jurisdiction to wind up companies in England.

- 131.** 1. The courts having jurisdiction to wind up companies registered in England shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, and the county courts.
2. Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.
3. Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.
4. Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.
5. The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890. — In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy. — An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.
6. Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.
7. Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.
8. For the purposes of this section the expression “registered office” means the place which has longest been the registered office of the company

during the six months immediately preceding the presentation of the petition for winding up.

Conduct of winding-up business in High Court in England.

132. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction to wind up companies of the High Court in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

Transfer of proceedings.

133. 1. The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.
2. The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.
3. If any question arises in any winding up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Jurisdiction to wind up companies in Ireland.

134. The court having jurisdiction to wind up companies registered in Ireland shall be the High Court: — Provided that where the High Court in Ireland makes an order for winding up a company it may, if it thinks fit, direct that all subsequent proceedings in the winding up be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings shall be taken in that court of bankruptcy accordingly, and that court shall, for the purposes of the winding up, have all the powers of the High Court in Ireland.

Jurisdiction to wind up companies in Scotland.

135. The court having jurisdiction to wind up companies registered in Scotland shall be the Court of Session in either division thereof, or, in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary during session, and in time of vacation the Lord Ordinary on the bills.

Power in Scotland to remit winding up to Lord Ordinary.

136. Where the court in Scotland makes a winding up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court: — Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

Provisions as to applications for winding up.

137. 1. An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories or by all or any of those parties, together or separately: Provided that

- a) A contributory shall not be entitled to present a petition for winding up a company unless —
 - i) Either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or
 - ii) The shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and
 - b) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
 - c) The court shall not give a hearing to a petition for winding-up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding-up has been established to the satisfaction of the court.
2. Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.
3. Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Effect of winding-up order.

138. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement of winding up by court.

139. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Power to stay or restrain proceedings against company.

140. At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may —

- a) Where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
 - b) Where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;
- and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Powers of court on hearing petition.

141. 1. On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse

to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

2. Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Actions stayed on winding-up order.

142. When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Copy of order to be forwarded to registrar.

143. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Power of court to stay winding up.

144. The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Court may have regard to wishes of creditors or contributories.

145. The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Receiver.

Definition of official receiver.

146. 1. For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" shall mean the official receiver, if any, attached to the court for bankruptcy purposes, or if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade.
2. Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

Statement of company's affairs to be submitted to official receiver.

147. 1. Where the court in England has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.
2. The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.
3. The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.
4. Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred

in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

5. If any person, without reasonable excuse, makes default in complying with the requirements of this section he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.
6. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Report by official receiver.

- 148.** 1. Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court, —
- a) As to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
 - b) If the company has failed, as to the causes of the failure; and
 - c) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.
2. The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Liquidators.

Appointment, remuneration, and title of liquidators.

- 149.** 1. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.
2. The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.
3. Where the proceedings are in England: —
- a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed;
 - b) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
 - c) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.
4. If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.
5. In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.
6. A liquidator appointed by the court may resign or, on cause shown, be removed by the court.
7. A vacancy in the office of a liquidator appointed by the court shall be filled by the court. — In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.

8. Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.
9. A liquidator shall be described as follows (that is to say):
 - a) In a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and where the official receiver is liquidator, by the style of the official receiver and liquidator, and
 - b) In a winding up in Scotland or Ireland, by the style of the official liquidator, of the particular company in respect of which he is appointed, and not by his individual name.
10. The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

150. 1. In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.
2. In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

Powers of liquidator.

151. 1. The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court —
 - a) To bring or defend any action or other legal proceeding in the name and on behalf of the company;
 - b) To carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof;
 - c) In the case of a winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction;
 - d) In the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.
2. The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court —
 - a) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
 - b) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
 - c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
 - d) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business;
 - e) To raise on the security of the assets of the company any money requisite;

- f) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
 - g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
3. The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.
 4. In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.
 5. Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.
 6. In a winding up by the court in Scotland the liquidator shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate.

Meetings of creditors and contributories in English winding up.

152. 1. When a winding up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of: —
- a) Determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and
 - b) Determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.
2. The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.
 3. In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

Liquidator to give information to official receiver.

153. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Payments of liquidator in English winding up into bank.

154. 1. Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid: — Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

2. If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.
3. A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts in English winding up.

- 155.** 1. Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.
2. The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.
 3. The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.
 4. When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.
 5. The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Books to be kept by liquidator in English winding up.

156. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Release of liquidators in England.

- 157.** 1. When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.
2. Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
 3. An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

4. Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Exercise and control of liquidator's powers in England.

158. 1. Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England, shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.
2. The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.
3. The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.
4. Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.
5. If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board of Trade over liquidators in England.

159. 1. The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.
2. The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.
3. The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Committee of Inspection, Special Manager, Receiver.

Committee of inspection in English winding up.

160. 1. A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.
2. The committee shall meet at such times as they from time to time appoint, and, failing such appointment at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.
4. Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
5. If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself

represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

6. Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the object of the meeting.
7. On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.
8. The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.
9. If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

Power in England to appoint special manager.

161. 1. Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.
2. The special manager shall give such security and account in such manner as the Board of Trade direct.
3. The special manager shall receive such remuneration as may be fixed by the court.

Power in England to appoint official receiver as receiver for debenture holders or creditors.

162. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England the official receiver may be so appointed.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

163. 1. As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.
2. In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

Power to require delivery of property.

164. The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *primâ facie* entitled.

Power to order payment of debts by contributory.

165. 1. The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

2. The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.
3. But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

166. 1. The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
2. In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Power to order payment into bank.

167. 1. The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.
2. All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

168. 1. An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.
2. All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Power to exclude creditors not proving in time.

169. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

170. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Power to order costs.

171. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Dissolution of company.

172. 1. When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

2. The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.
3. If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

Delegation to liquidator of certain powers of court in England.

173. General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of —

- a) Holding and conducting meetings to ascertain the wishes of creditors and contributories;
- b) Settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
- c) Requiring delivery of property or documents to the liquidator;
- d) Making calls;
- e) Fixing a time within which debts and claims must be proved:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Extraordinary Powers of Court.

Power to summon persons suspected of having property of company.

- 174.** 1. The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs, or property of the company.
2. The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.
3. The court may require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.
4. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

Power in England to order public examination of promoters, directors, &c.

- 175.** 1. When an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person, who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation, or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.
2. The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.
3. The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

4. The court may put such questions to the person examined as the court thinks fit.
5. The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.
6. A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.
7. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.
8. The court may, if it thinks fit, adjourn the examination from time to time.
9. An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or in the case of companies being wound up by a palatine court, before a registrar of that court, and the powers of the court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Power to arrest absconding contributory.

176. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

Powers of court cumulative.

177. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Enforcement of and Appeal from Orders.

Power to enforce orders.

178. 1. Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein.
2. For the purposes of this Part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

Order for calls on contributories in Scotland.

179. Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the same became due, to pronounce forthwith a

decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest; and the decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignment, unless with special leave of the court.

Enforcement of orders throughout United Kingdom.

180. 1. Any order made by court in England for or in the course of winding up a company shall be enforced in Scotland and Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts.
2. In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.
3. Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

Appeals from order.

181. 1. Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.
2. Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation, that —
- i) No order or judgment under the provisions of this Act specified in the First Part of the Fourth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and
 - ii) Every other order or judgment (except as herein-after mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment: Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Fourth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.
3. Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding-up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.
4. Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

182. A company may be wound up voluntarily:

1. When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.
2. If the company resolves by special resolution that the company be wound up voluntarily.
3. If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

Commencement of voluntary winding up.

183. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

Effect of voluntary winding up on status of company.

184. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof. — Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of resolution to wind up voluntarily.

185. When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the Gazette.

Consequences of voluntary winding up.

186. The following consequences shall ensue on the voluntary winding up of a company:

1. The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.
2. The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.
3. On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.
4. The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court.
5. The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves.
6. The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories.
7. When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two.
8. If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator.
9. The court may, on cause shown, remove a liquidator, and appoint another liquidator.

Notice by liquidator of his appointment.

187. 1. The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade.

2. If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Rights of creditors in a voluntary winding-up.

188. 1. Every liquidator appointed by a company in a voluntary winding-up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.
2. At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.
 3. On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.
 4. No appeal shall lie from any order of the court upon an application under this section.
 5. The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Power to fill vacancy in office of liquidator.

189. 1. If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
2. For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
 3. The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Delegation of authority to appoint liquidators.

190. 1. A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.
2. Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors.

191. 1. Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to

any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three fourths in number and value of the creditors.

2. Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power of liquidator to accept shares &c. as consideration for sale of property of company.

192. 1. Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.
2. Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.
3. If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.
4. If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.
5. A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.
6. For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding-up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

Power to apply to court.

193. 1. Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
2. The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

Power of liquidator to call general meeting.

- 194.** 1. Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.
2. In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

Final meeting and dissolution.

- 195.** 1. In the case of every voluntary winding-up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.
2. The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.
3. Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.
4. The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved: Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.
5. It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Costs of voluntary liquidation.

196. All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

197. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion in the case of an application by a creditor, that the rights of the creditor, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

Power of court to adopt proceedings of voluntary winding up.

198. Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding Up subject to Supervision of Court.**Power to order winding up subject to supervision.**

199. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty

for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

Effect of petition for winding up subject to supervision.

200. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Court may have regard to wishes of creditors and contributories.

201. The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Power for court to appoint or remove liquidators.

- 202.** 1. Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator.
 2. A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.
 3. The court may remove any liquidator so appointed by the court, or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.

- 203.** 1. Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily.
 2. A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except subsection (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding up by the court.

Appointment of voluntary liquidator as liquidator in winding up by court in Scotland or Ireland.

204. Where an order has been made in Scotland or Ireland for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

Supplemental Provisions.

Avoidance of transfers, &c. after commencement of winding up.

- 205.** 1. In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.
 2. In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall unless the court otherwise orders, be void.

Debts of all descriptions to be proved.

206. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent English and Irish companies.

207. In the winding up of an insolvent company registered in England or Ireland the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the case may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Ranking of claims in Scotland.

208. In the winding up of a company registered in Scotland, the general and special rules in regard to voting and ranking for payment of dividends provided by sections forty-nine to sixty-six of the Bankruptcy (Scotland) Act, 1856, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as is consistent with this Act, apply to creditors of the company voting in matters relating to the winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean winding up, trustee to mean liquidator, and sheriff to mean the court.

Preferential payments.

209. 1. In a winding up there shall be paid in priority to all other debts: —

- a) All parochial or other local rates due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;
- b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and
- c) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date; and
- d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability whereof accrued before the said date, subject nevertheless to the provisions of section five of that Act.

2. The foregoing debts shall —

- a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

- b) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- 3. Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.
- 4. In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.
- 5. The date herein-before in this section referred to is —
 - a) In the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
 - b) In any other case, the date of the commencement of the winding up.

Fraudulent preference.

- 210.** 1. Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.
2. For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.
3. Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Avoidance of certain attachments, executions, &c. in case of company registered in England or Ireland.

211. Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company the commencement of the winding-up shall be void to all intents.

Effect of floating charge.

212. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

Effect in case of company registered in Scotland of diligence within 60 days of winding up by or subject to supervision of court.

213. In the winding up, by or subject to the supervision of the court, of a company registered in Scotland, the following provisions shall have effect:

- 1. The winding up shall, in the case of a winding up by the court as at its commencement, and in the case of a winding up subject to supervision as at the date of the presentation of the petition on which the supervision order is pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the

winding up by the court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and those funds or effects, or the proceeds of those effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or poulder before the date of the winding up, or of the petition, as the case may be, who is thus deprived of the benefit of his diligence, shall have preference out of those funds or effects for the expense *bonâ fide* incurred by him in such diligence.

2. The winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein-after provided.
3. The provisions of sections one hundred and twelve to one hundred and seventeen, and of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator"; and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland.
4. No pouding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent herein-after provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a pouding of the ground after the respective date aforesaid, but that pouding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

General scheme of liquidation may be sanctioned.

214. 1. The liquidator may, with the sanction following (that is to say) —

- a) In the case of a winding up by the court in England, with the sanction either of the court or of the committee of inspection;
- b) In the case of a winding up by the court in Scotland or Ireland, and in the case of any winding up subject to supervision, with the sanction of the court; and
- c) In the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,

do the following things or any of them:

- i) Pay any classes of creditors in full;
- ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- iii) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

2. In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Power of court to assess damages against delinquent directors, &c.

- 215.** 1. Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.
2. This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.
 3. Where in the case of a winding-up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section four of the Bankruptcy Act, 1883.
 4. So much of this section as refers to promoters, and to property of a company other than money, shall not apply to a winding up in Scotland or Ireland.

Penalty for falsification of books.

216. If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution of delinquent directors, &c.

- 217.** 1. If it appears to the court in the course of a winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.
2. If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Penalty on perjury.

218. If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

Meetings to ascertain wishes of creditors or contributories.

- 219.** 1. Where by this Act the court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court may, if it thinks fit, for the purpose of

ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

2. In the case of creditors, regard shall be had to the value of each creditor's debt.
3. In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

Books of company to be evidence.

220. Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Inspection of books.

221. After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Disposal of books and papers of company.

- 222.** 1. When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say):
- a) In the case of a winding up by or subject to the supervision of the court in such way as the court directs;
 - b) In the case of a voluntary winding up in such way as the company by extraordinary resolution directs.
2. After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Power of court to declare dissolution of company void.

- 223.** 1. Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.
2. It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Information as to pending liquidations in England.

- 224.** 1. Where a company is being wound up in England, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.
2. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

3. If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.
4. If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.
5. For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.
6. Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.
7. Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

Judicial notice of signature of officers.

225. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stannaries jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Session, or court exercising the stannaries jurisdiction, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

Special commission for receiving evidence.

226. 1. The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the judge exercising the bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in any part of the United Kingdom, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding-up order.
2. Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of a county court, judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.
3. The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may order examination of persons in Scotland.

227. 1. The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound up, or of any person being a contributory of the

company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

2. The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.
3. If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.
4. The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.
5. If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Affidavits, &c. in United Kingdom and colonies.

228. 1. Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.
2. All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Companies Liquidation Account defined.

229. 1. An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.
2. All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds on general account.

230. 1. Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

2. When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.
3. The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

Separate accounts of particular estates.

231. 1. An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.
2. When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.
3. The dividends on investments under this section shall be paid to the credit of the company.
4. When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

Certain receipts and fees to be applied in aid of expenditure.

232. The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding up of companies in England from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under this Act in relation to the winding up of companies in England.

Officers and remuneration.

233. 1. The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.
2. The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.
3. The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as he thinks fit.

Annual accounts of English winding up.

234. 1. The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act in relation to the winding up of com-

panies in England, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

2. The accounts of the Board of Trade under this Act in relation to the winding up of companies in England shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board shall make such returns and give such information as the Treasury direct.

Returns by officers in English winding up.

235. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Proceedings of Board of Trade.

236. 1. All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.
2. A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Rules and Fees.

Rules and fees for winding up in England.

237. 1. The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England.
2. All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.
3. There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.
4. All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the county palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.
5. The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890 (53 & 54 Vict. c. 63), which are in force at the commencement of this Act.

Powers to make rules of procedure.

238. 1. Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made —

- a) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England;
 - b) As regards the Court of Session, by act of sederunt;
 - c) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland;
 - d) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.
2. The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862, or any Act amending the same, which are in force at the commencement of this Act.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

239. When several companies are in course of liquidation by or under the superintendence of the Court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course: Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

Preferential payments in stannaries cases.

240. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:

1. In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser, or secretary.
2. All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts.
3. Wages of any miner, artizan, or labourer unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefor accrued before the commencement of the winding-up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding-up by the court) such costs of and incidental to the making of the winding-up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary, and, subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

Provisions as to mine club funds.

- 241.** 1. On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as, part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.
2. Where the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

Removal of Defunct Companies from Register.**Registrar may strike defunct company off register.**

- 242.** 1. Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.
2. If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.
3. If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
4. If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding subsection.
5. At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.
6. If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

7. A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Part V. Registration Office and Fees.

Registration offices in England, Scotland, and Ireland.

243. 1. For the purposes of the registration of companies under this Act, there shall be offices in England, Scotland, and Ireland, at such places as the Board of Trade think fit.
2. The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the registration of companies under this Act, and may make regulations with respect to their duties; and may remove any persons so appointed.
3. The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.
4. The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.
5. The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.
6. Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation, and not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.
7. A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England, Scotland, or Ireland, certified to be a true copy under the hand of the registrar or an assistant registrar (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document.
8. Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the Board may for the time being authorise; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or to or by such person as the Board may for the time being authorise in Scotland or Ireland, in the absence of the registrar or assistant registrar; but, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

Fees.

244. 1. There shall be paid to the registrar in respect of the several matters mentioned in Table B. in the First Schedule to this Act the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct.
2. All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

Part VI. Application of Act to Companies formed and registered under former Companies Acts.

Application of Act to companies formed under former Companies Acts.

245. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company: Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

Application of Act to companies registered under former Companies Acts.

246. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is herein-after in this Act declared to apply to companies registered but not formed under this Act: Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

Application of Act to companies re-registered under Companies Act, 1879.

247. This Act shall apply to every unlimited company registered in pursuance of the Companies Act, 1879, as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company: Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the Companies Act, 1879.

Mode of transferring shares.

248. A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

Part VII. Companies authorised to register under this Act.

Companies capable of being registered.

249. 1. With the exceptions and subject to the provisions mentioned and contained in this section:

- i) Any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and
- ii) Any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.

2. Provided as follows:

- a) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as herein-after defined, shall not register in pursuance of this section;
- b) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

- e) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;
 - d) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose;
 - e) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting;
 - f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
3. In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.
 4. A company registered under the Companies Act, 1862, shall not be registered in pursuance of this section.

Definition of joint stock company.

250. For the purpose of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Liability of bank of issue unlimited in respect of notes.

- 251.** 1. A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes; and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.
2. For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.
3. Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Requirements for registration by joint stock companies.

252. Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents (that is to say):

1. A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

2. A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and
3. If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):
 - a) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;
 - b) The number of shares taken and the amount paid on each share;
 - c) The name of the company, with the addition of the word "limited" as the last word thereof; and
 - d) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint stock companies.

253. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar:

1. A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and
2. A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and
3. In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statements of existing companies.

254. The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

255. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

- 256.** 1. Where a banking company which was in existence on the seventh day of August eighteen hundred and sixty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.
2. If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

257. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

Addition of "limited" to name.

258. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

Certificate of registration of existing companies.

259. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under Table B. in the First Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal,

with power to hold lands; and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

Vesting of property on registration.

260. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving for existing liabilities.

261. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing actions.

262. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

Effect of registration under Act.

263. When a company is registered in pursuance of this Part of this Act:

1. All provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles;
2. All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):
 - a) The regulations in Table A. in the First Schedule to this Act shall not apply unless adopted by special resolution;
 - b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;
 - c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;
 - d) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company;
 - e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;
 - f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall

be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply;

3. The provisions of this Act with respect to:
 - a) The registration of an unlimited company as limited;
 - b) The powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;
 - c) The power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;
 shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company;
4. Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act;
5. Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

- 264.** 1. Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.
2. The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:
 - a) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies, a printed copy of the substituted memorandum and articles; and
 - b) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.
 3. An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.
 4. In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

Power of court to stay or restrain proceedings.

265. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding up order.

266. Where an order has been made for winding up a company registered in pursuance of this Part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Part VIII. Winding Up of Unregistered Companies.**Meaning of unregistered company.**

267. For the purposes of this Part of this Act the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863. and any limited partnership.

Winding up of unregistered companies.

268. 1. Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:

- i) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company;
- ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision;
- iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say):
 - a) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - b) If the company is unable to pay its debts;
 - c) If the court is of opinion that it is just and equitable that the company should be wound up;
- iv) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:
 - a) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;
 - b) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the

company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

- c) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
 - d) If in Scotland the inducible of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;
 - e) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts;
 - v) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867: Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicature (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that Court;
 - vi) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company;
 - vii) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications (if any) as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.
2. Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

Contributories in winding up of unregistered company.

269. 1. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid: Provided that, in the case of an unregistered company within the statutes, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.
2. In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased con-

tributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

Power of court to stay or restrain proceedings.

270. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

271. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Directions as to property in certain cases.

272. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of Part of Act cumulative.

273. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions herein-before in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

Part IX. Companies established outside the United Kingdom.

Requirements as to companies established outside the United Kingdom.

274. 1. Every company incorporated outside the United Kingdom which establishes a place of business in the United Kingdom, shall within one month from the establishment of the place of business, file with the registrar of companies:

- a) A certified copy of the charter, statutes, or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- b) A list of the directors of the company;
- c) The names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the company service of process and any notices required to be served on the company; and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time file with the registrar a notice of the alteration.

2. Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.
3. Every company to which this section applies shall in every year file with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Act and having a share capital, be required under this Act to be included in the annual summary.

4. Every company to which this section applies, and which uses the word "Limited" as part of its name shall:
 - a) In every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated; and
 - b) Conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company and the country in which the company is incorporated; and
 - c) Have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.
5. If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.
6. For the purposes of this section:

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

The expression "place of business" includes a share transfer or share registration office;

The expression "director" includes any person occupying the position of director, by whatever name called; and

The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.
7. There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five shillings or such smaller fee as may be prescribed.

Power of companies incorporated in British possessions to hold lands.

275. A company incorporated in a British possession which has filed with the registrar of companies the documents and particulars specified in paragraphs a, b, and c of subsection 1 of the last foregoing section shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act.

Part X. Supplemental.

Legal Proceedings, Offences, &c.

Prosecution of offences.

276. 1. All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.
2. In Scotland all prosecutions for offences or fines under the provisions of this Act relating to:
- a) The appointment of directors;
 - b) The restrictions on commencement of business by a company;
 - c) Returns as to allotments;
 - d) False statements in respect of which a penalty is provided by this Part of this Act;
 - e) The filing of copies of a prospectus, an order revoking the dissolution, or an order sanctioning the reorganisation of the share capital of a company;
 - f) The filing of notice of appointment of a liquidator or of the accounts of a receiver or manager;
 - g) General meetings;
 - h) Companies established outside the United Kingdom;
 - i) The issue of debentures and certificates of shares and debenture stock;
 - j) The issue, circulation, and publication of balance sheets;
 - k) Unqualified persons acting as directors;
 - l) The inspection of registers of debenture holders and the furnishing of copies of trust deeds;

shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct

Applications of fines.

277. The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

Costs in actions by certain limited companies.

278. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

279. If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

Jurisdiction of stannaries court.

280. 1. In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.
2. For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit: Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.
3. All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

Penalty for false statement.

281. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

Penalty for improper use of word "Limited".

282. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

Report by Board of Trade.**Annual report by Board of Trade.**

283. The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

Authentication of Documents issued by Board of Trade.**Authentication of documents issued by Board of Trade.**

284. Any approval, sanction, or licence, or revocation of licence which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

Interpretation, &c.**Interpretation.**

285. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862;

"Company" means a company formed and registered under this Act or an existing company;

"Articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A. in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of that Act, or in Table A. in the First Schedule to this Act;

"Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act;

"Document" includes summons, notice, order, and other legal process, and registers;

"Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied;

"Debenture" includes debenture stock;

"Books and papers" and "books or papers" include accounts, deeds, writings, and documents;

"The registrar of companies", or, when used in relation to registration of companies, "the registrar", means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires;

"The court" used in relation to a company means the court having jurisdiction to wind up the company;

"Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intitled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies;

"The Gazette" means, as respects companies registered in England, the London Gazette; as respects companies registered in Scotland, the Edinburgh Gazette; and as respects companies registered in Ireland, the Dublin Gazette;

- “Real and personal”, as respects Scotland, means heritable and moveable;
 “General rules” means general rules made under this Act, and includes forms;
 “Prescribed” means, as respects the provisions of this Act relating to the winding-up of companies, prescribed by general rules, and as respect the other provisions of this Act, prescribed by the Board of Trade;
 “Company within the stannaries” means a company engaged in or formed for working mines within the stannaries;
 “The court exercising the stannaries jurisdiction” used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested.
 “Director” includes any person occupying the position of director by whatever name called;
 “Prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

Repeal of Acts and Transitional Provisions.

Repeal of Acts and savings.

286. 1. The Acts mentioned in the First Part of the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part: Provided that the repeal shall not affect:
- a) The incorporation of any company registered under any enactment hereby repealed; nor
 - b) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor
 - c) Table A. in the First Schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy-one of that Act) so far as the same applies to any company existing at the commencement of this Act; nor
 - d) The continuance in force of the enactments set out in the Second Part of the Sixth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.
2. The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

Saving of pending proceedings for winding up.

287. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

Saving of deeds.

288. Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

Former registration offices, registers, official receivers, &c. continued.

289. 1. The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act.
2. Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.
3. The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall during the pleasure of the Board of Trade hold the offices and receive the salaries hitherto held and received by them, but

subject to any regulations of the Board of Trade with regard to the executing of their duties.

4. The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.
5. Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive the salaries or remuneration hitherto received by them.
6. The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890.

Saving for existing rules of procedure, &c.

290. Until revoked and except as varied under the powers of this Act, the general rules and orders, and scales of fees, under the Companies (Winding Up) Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

Substitution of provisions of this Act for provisions of repealed Acts.

291. Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

Saving for 28 & 29 Vict. c. 78. s. 3.

292. Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865.

Saving for Life Assurance Companies Acts. 33 & 34 Vict. c. 61. 34 & 35 Vict. c. 58. 35 & 36 Vict. c. 41.

293. Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872¹⁾, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act.

Saving for 34 & 35 Vict. c. 31. s. 5.

294. Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

Short title.

295. This Act may be cited as the Companies (Consolidation) Act, 1908.

Commencement of Act.

296. This Act shall come into operation on the first day of April nineteen hundred and nine.

Schedules.

First Schedule.

Table A. Regulations for Management of a Company Limited by Shares.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in force at the date

¹⁾ See now 9 Edw. VII c. 49, *infra*.

at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

'Business.'

2. The directors shall have regard to the restrictions on the commencement of business imposed by section eighty-seven of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of the Companies (Consolidation) Act, 1908, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

Transfer and Transmission of Shares.

Witness to the signatures of, &c.

Forfeiture of Shares.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made.

and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder".

Share Warrants.

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be

recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may, by special resolution —

a) Consolidate and divide its share capital into shares of larger amount than its existing shares:

By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of subsection (1) of section forty-one of the Companies (Consolidation) Act, 1908:

c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person:

d) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section sixty-five of the Companies (Consolidation) Act, 1908.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section sixty-six of the Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regu-

lations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:

Company, Limited.

"I of in the county of being a member of the
 Company, Limited, hereby appoint of as my
 proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case
 may be] general meeting of the company to be held on the day of
 an at any adjournment thereof."

Signed this day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of the Companies (Consolidation) Act, 1908.

Powers and Duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose —

- a) of all appointments of officers made by the directors;
- b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated, if the director —

- a) ceases to be a director by virtue of section seventy-three of the Companies (Consolidation) Act, 1908; or
- b) holds any other office of profit under the company except that of managing director or manager; or

- c) becomes bankrupt; or
- d) is found lunatic or becomes of unsound mind; or
- e) is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director: but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairmann shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings; if no such chairmann is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that

there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder ;

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

Notices.

110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

Table B. Table of Fees to be paid to the Registrar of Companies.

I. By a company having a share capital.		£ s. d.
For registration of a company whose nominal share capital does not exceed 2,000 <i>l.</i>		2 0 0
For registration of a company whose nominal share capital exceeds 2,000 <i>l.</i> , the following fees, regulated according to the amount of nominal share capital (that is to say);		
For every 1,000 <i>l.</i> of nominal share capital, or part of 1,000 <i>l.</i> , up to 5,000 <i>l.</i>		1 0 0
For every 1,000 <i>l.</i> of nominal share capital, or part of 1,000 <i>l.</i> , after the first 5,000 <i>l.</i> , up to 100,000 <i>l.</i>		0 5 0
For every 1,000 <i>l.</i> of nominal share capital, or part of 1,000 <i>l.</i> , after the first 100,000 <i>l.</i>		0 1 0
For registration of any increase of share capital made after the first registration of the company, the same fees per 1,000 <i>l.</i> , or part of a 1,000 <i>l.</i> , as would have been payable if the increased share capital had formed part of the original share capital at the time of registration:		
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than 50 <i>l.</i> , taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.		
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.		
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England		0 5 0
For making a record of any fact by this Act required or authorised to be recorded by the registrar		0 5 0
II. By a company not having a share capital.		
For registration of a company whose number of members, as stated in the articles, does not exceed 20		2 0 0
For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100		5 0 0
For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of 5 <i>l.</i> , with an additional 5 <i>s.</i> for every 50 members or less number than 50 members after the first 100.		
For registration of a company in which the number of members is stated in the articles to be unlimited		20 0 0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase		0 5 0
Provided that no company shall be liable to pay on the whole a greater fee than 20 <i>l.</i> in respect of its number of members, taking into account the fee paid on the first registration of the company.		

For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.	£ s. d.
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England	0 5 0
For making a record of any fact by this Act required or authorised to be recorded by the registrar	0 5 0

Form C. Form of Statement to be published by Banking and Insurance Companies, and Deposit, Provident, or Benefit Societies.

* The share capital of the company is	, divided into	shares of
each.		
The number of shares issued is		
Calls to the amount of	pounds per share have been made, under which the	
sum of	pounds has been received.	
The liabilities of the company on the first day of January (or July) were		
Debts owing to sundry persons by the company.		
On judgment, £		
On specialty, £		
On notes or bills, £		
On simple contracts, £		
On estimated liabilities, £		
The assets of the company on that day were		
Government securities [<i>stating them</i>]		
Bills of exchange and promissory notes, £		
Cash at the bankers, £		
Other securities, £		

Second Schedule.

The Companies (Consolidation) Act, 1908.

Statement in lieu of prospectus
filed by

Limited

pursuant to section eighty-two of the Companies (Consolidation) Act, 1908.
Presented for filing by

The Companies (Consolidation) Act, 1908.

Limited.

Statement in lieu of prospectus.

The nominal share capital of the company . . . £			
Divided into	Shares of £	each.	
	" "	"	
	" "	"	
Names, descriptions, and addresses of directors or proposed directors.			
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.			
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1.	shares of £	fully
		paid.	
The consideration for the intended issue of those shares and debentures.	2.	shares upon which £	
		per share credited as paid.	
	3.	debenture	£
	4.	Consideration.	

* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash £ Shares £ Debentures £ Goodwill £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or. Rate of the commission	Amount paid. „ payable. Rate per cent.
Estimated amount of preliminary expenses .	£
Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter. Amount £ Consideration:
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

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Third Schedule.

Form A. Memorandum of Association of a company limited by shares.

- 1st. The name of the company is "The Eastern Steam Packet Company, Limited".
 2nd. The registered office of the company will be situate in England.
 3rd. The object for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."
 4th. The liability of the members is limited.
 5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.
 WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the county of	merchant	200
"2. John Smith of	in the county of		25
"3. Thomas Green of	in the county of		30
"4. John Thompson of	in the county of		40
"5. Caleb White of	in the county of		15
"6. Andrew Brown of	in the county of		5
"7. Caesar White of	in the county of		10
Total shares taken			325

Dated the day of 19 .

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, London.

Form B. Memorandum and Articles of Association of a company limited by Guarantee, and not having a share capital.

Memorandum of Association.

- 1st. The name of the company is "The Mutual London Marine Association, Limited".
 2nd. The registered office of the company will be situate in England.
 3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."
 4th. The liability of the members is limited.
 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.
 WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the county of	merchant.
"2. John Smith of	in the county of	
"3. Thomas Green of	in the county of	
"4. John Thompson of	in the county of	
"5. Caleb White of	in the county of	
"6. Andrew Brown of	in the county of	
"7. Caesar White of	in the county of	

Dated the day of 19 .

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association.

Number of Members.

1. The Company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors herein-after mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations herein-after contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner herein-after mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

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Form C. Memorandum and Articles of Association of a company limited by guarantee, and having a share capital.

Memorandum of Association.

- 1st. The name of the company is "The Highland Hotel Company, Limited."
 - 2nd. The registered office of the company will be situate in Scotland.
 - 3rd. The objects for which the company is established are "the facilitating travelling in "the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the "accommodation of travellers, and the doing all such other things as are incidental or conducive "to the attainment of the above object."
 - 4th. The liability of the members is limited.
 - 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.
 - 6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.
- WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the county of	. . . . .	200
"2. John Smith of	in the county of	. . . . .	25
"3. Thomas Green of	in the county of	. . . . .	3
"4. John Thompson of	in the county of	. . . . .	40
"5. Caleb White of	in the county of	. . . . .	15
"6. Andrew Brown of	in the county of	. . . . .	5
"7. Caesar White of	in the county of	. . . . .	10
Total shares taken			325
Dated the day of 19 .			
Witness to the above signatures,			
A. B., No. 13, Hute Street, Clerkenwell, London.			

Articles of Association to accompany preceding Memorandum of Association.

- 1. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.
- 2. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.
- 3. All the articles of Table A. of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses, and Descriptions of Suscribers.

"1. John Jones of	in the county of	merchant.
"2. John Smith of	in the county of	
"3. Thomas Green of	in the county of	
"4. John Thompson of	in the county of	
"5. Caleb White of	in the county of	
"6. Andrew Brown of	in the county of	
"7. Caesar White of	in the county of	
Dated the day of 19 .		
Witness to the above signatures,		
A. B., No. 13, Hute Street, Clerkenwell, London.		

Form D. Memorandum and Articles of Association of an unlimited company having a share capital.

Memorandum of Association.

- 1st. The name of the company is "The Patent Stereotype Company."
- 2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the county of	. . . . .	3
"2. John Smith of	in the county of	. . . . .	2
"3. Thomas Green of	in the county of	. . . . .	1
"4. John Thompson of	in the county of	. . . . .	2
"5. Caleb White of	in the county of	. . . . .	2
"6. Andrew Brown of	in the county of	. . . . .	1
"7. Abel Brown of	in the county of	. . . . .	1
Total shares taken			12

Dated the day of 19 .

Witness to the above signatures,
A. B., No. 20, Bond Street, London.

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

2. All the articles of Table A. of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles, and to apply to the company.

Names, Addresses, and Description of Subscribers.

"1. John Jones of	in the county of	merchant.
"2. John Smith of	in the county of	
"3. Thomas Green of	in the county of	
"4. John Thompson of	in the county of	
"5. Caleb White of	in the county of	
"6. Andrew Brown of	in the county of	
"7. Abel Brown of	in the county of	

Dated the day of 19 .

Witness to the above signatures,
A. B., No. 20, Bond Street, London.

Form E. As required by Part II. of the Act.

Summary of Share Capital and Shares of the Company, Limited,
made up to the day of 19 (being the fourteenth day
after the date of the first ordinary general meeting in 19).

Nominal share capital £	divided into ¹⁾	share of £	each.
Total number of shares taken up ¹⁾ to the	day	shares of £	each.
of 19	(which number must agree with the		
total shown in the list as held by existing members).			
Number of shares issued subject to payment wholly in cash			
Number of shares issued as fully paid up otherwise than in cash			
Number of shares issued as partly paid up to the extent of per			
share otherwise than in cash			
1) There has been called up on each of shares, £			
There has been called up on each of shares, £			
2) There has been called up on each of shares, £			
3) Total amount of calls received, including payments on application and allot-			
ment			

1) When there are shares of different kinds or amounts (e.g., Preference and Ordinary, or 10l. or 5l.) state the numbers and nominal values separately.

2) Where various amounts have been called or there are shares of different kinds state them separately.

3) Include what has been received on forfeited as well as on existing shares.

Form F. Licence to hold Lands.

The Board of Trade hereby license the _____ to hold the
lands hereunder described (*insert description of lands*) [or to hold lands not exceeding in the
whole _____ acres].

The conditions of this licence are (*insert condition, if any*).

Fourth Schedule.**Part I. Orders Pronounced in Vacation in Scotland which are to be Final.****Orders:**

As to time for proving claims.

As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company.

As to meetings for ascertaining wishes of creditors or contributories.

As to summoning meetings of creditors or contributories where a compromise is proposed.

As to the examination of witnesses in regard to the property or affairs of a company.

Part II. Orders Pronounced in Vacation in Scotland which are to take effect until Reclaiming Note disposed of.**Orders:**

Restraining or permitting commencement or continuance of legal proceedings.

Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or under supervision.

Sanctioning the exercise of any power by an official liquidator other than the power to appoint a law agent or to sell property.

Requiring the delivery of property or documents to the official liquidator.

As to the arrest and detention of an absconding contributory and his property.

Limiting the powers of provisional official liquidators.

For continuance of winding-up under supervision.

Fifth Schedule.**Provisions referred to in Section 281 of the Act.****Provisions relating to—**

The conclusiveness of certificates of incorporation;

Restrictions on appointment or advertisement of directors;

Restrictions on commencement of business;

Returns as to allotments;

Statutory meetings;

The particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary;

The appointment and remuneration, and powers and duties, of auditors;

Obligation of companies where no prospectus is issued;

Registration of mortgages and charges in England and Ireland;

Filing of accounts of receiver and manager;

Notice by liquidator in voluntary winding-up of his appointment;

Rights of creditors in a voluntary winding-up;

Requirements as to companies established outside the United Kingdom; and

Annual report by Board of Trade.

Sixth Schedule.**Part I. Enactments repealed.**

Session and Chapter.	Short Title of Act.	Extent of Repeal.
25 & 26 Vict. c. 89.	The Companies Act, 1862.	The whole Act.
27 Vict. c. 19.	The Companies Seals Act, 1864.	The whole Act.
30 & 31 Vict. c. 131.	The Companies Act, 1867.	The whole Act.
32 & 33 Vict. c. 19.	The Stannaries Act, 1869.	Sections twenty-five, twenty-six, and thirty-four.
33 & 34 Vict. c. 104.	The Joint Stock Companies Arrangement Act, 1870.	The whole Act.

Session and Chapter.	Short Title of Act.	Extent of Repeal.
37 & 38 Vict. c. 94.	Conveyancing (Scotland) Act, 1874.	Section fifty-six.
38 & 39 Vict. c. 77.	The Supreme Court of Judicature Act, 1875.	Section ten, so far as relates to the winding up of companies.
40 & 41 Vict. c. 26.	The Companies Act, 1877.	The whole Act.
40 & 41 Vict. c. 57.	The Supreme Court of Judicature (Ireland) Act, 1877.	Subsection (1) of section twenty-eight, so far as relates to the winding up of companies.
42 & 43 Vict. c. 76.	The Companies Act, 1879.	The whole Act.
43 Vict. c. 19.	The Companies Act, 1880.	The whole Act.
46 & 47 Vict. c. 30.	The Companies (Colonial Registers) Act, 1883.	The whole Act.
49 Vict. c. 23.	The Companies Act, 1886.	The whole Act.
50 & 51 Vict. c. 43.	The Stannaries Act, 1887.	Sections nine and ten; section thirteen from "Upon the winding up" to the end of the section (being paragraph 2); and section thirty-one.
50 & 51 Vict. c. 47.	The Trustee Savings Banks Act, 1887.	Section three.
51 & 52 Vict. c. 62.	The Preferential Payments in Bankruptcy Act, 1888.	Sections one, two, and three, so far as they relate to companies.
52 & 53 Vict. c. 42.	The Revenue Act, 1889.	Section eighteen.
52 & 53 Vict. c. 60.	The Preferential Payments in Bankruptcy (Ireland) Act, 1889.	Section four, so far as relates to companies.
53 & 54 Vict. c. 62.	The Companies (Memorandum of Association) Act, 1890.	The whole Act.
53 & 54 Vict. c. 63.	The Companies (Winding up) Act, 1890.	The whole Act.
53 & 54 Vict. c. 64.	The Directors Liability Act, 1890.	The whole Act.
56 & 57 Vict. c. 58.	The Companies (Winding up) Act, 1893.	The whole Act.
60 & 61 Vict. c. 19.	The Preferential Payments in Bankruptcy Amendment Act, 1897.	The whole Act.
61 & 62 Vict. c. 26.	The Companies Act, 1898.	The whole Act.
63 & 64 Vict. c. 48.	The Companies Act, 1900.	The whole Act.
7 Edw. 7. c. 24.	The Limited Partnerships Act, 1907.	Subsection (4) of section six.
7 Edw. 7. c. 50.	The Companies Act, 1907.	The whole Act.
8 Edw. 7. c. 12.	The Companies Act, 1908.	The whole Act.

Part II.

An Act to regulate Joint Stock Banks in England.

7 & 8 Vict. c. 113, s. 47.

Existing Companies to have the Powers of suing and being sued.

Every Company of more than Six Persons established on the Sixth Day of May One thousand eight hundred and forty-four, for the Purpose of carrying on the Trade or Business of Bankers within the Distance of Sixty-five Miles from London, and not within the Provisions of the Act passed in the Session holden in the Seventh and Eighth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, shall have the same Powers and Privileges of suing and being sued in the Name of any One of the Public Officers of such Copartnership as the Nominal Plaintiff, Petitioner or Defendant on behalf of such Copartnership; and all Judgments, Decrees, and Orders, made and obtained in any such Suit may be enforced in like Manner as is provided with respect to such Companies carrying on the said Trade or Business at any Place in England exceeding the Distance of Sixty-five Miles from London, under the Provisions of an Act passed in the Seventh year of the Reign of King George the Fourth, Chapter Forty-six, intituled "An Act for the better regulating Copartnerships of Certain Bankers in England,

and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of His late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred,' as relates to the same," provided that such first-mentioned Company shall make out and deliver from Time to Time to the Commissioners of Stamps and Taxes the several Accounts or Returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such Accounts or Returns shall be taken to apply to the Accounts or Returns so made out and delivered by such first-mentioned Companies as if they had been originally included in the Provisions of the last-recited Act.

The Joint Stock Banking Companies Act, 1857.

Part of s. 12.

Power to form Banking Partnerships of Ten Persons.

Notwithstanding anything contained in any Act passed in the Session holden in the Seventh and Eighth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any Number of Persons, not exceeding Ten, to carry on in Partnership the Business of Banking, in the same Manner and upon the same Conditions in all respects as any Company of not more than Six Persons could before the passing of this Act have carried on such Business.

The Marine Insurance (Gambling Policies) Act, 1909.

9 Edw. VII.

Cap. XII.

An Act to prohibit Gambling on Loss by Maritime Perils (20th October 1909).

Prohibition of gambling on loss by maritime perils.

1. 1. If—

- a) Any person effects a contract of marine insurance without having any bonâ fide interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made or in the safety or preservation of the subject-matter insured, or a bonâ fide expectation of acquiring such an interest; or
 - b) Any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship, and the contract is made "interest or no interest", or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term,
- the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it shall be guilty of an offence, and shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding six months or to a fine not exceeding one hundred pounds, and in either case to forfeit to the Crown any money he may receive under the contract.
2. Any broker or other person through whom, and any insurer with whom, any such contract is effected shall be guilty of an offence and liable on summary conviction to the like penalties if he acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of this Act.
 3. Proceedings under this Act shall not be instituted without the consent in England of the Attorney-General, in Scotland of the Lord Advocate, and in Ireland of the Attorney-General for Ireland.
 4. Proceedings shall not be instituted under this Act against a person (other than a person in the employment of the owner of the ship in relation to which

the contract was made) alleged to have effected a contract by way of gambling on loss by maritime perils until an opportunity has been afforded him of showing that the contract was not such a contract as aforesaid, and any information given by that person for that purpose shall not be admissible in evidence against him in any prosecution under this Act.

5. If proceedings under this Act are taken against any person (other than a person in the employment of the owner of the ship in relation to which the contract was made) for effecting such a contract, and the contract was made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils unless the contrary is proved.
6. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.
7. Any person aggrieved by an order or decision of a court of summary jurisdiction under this Act, may appeal to quarter sessions.
8. For the purposes of this Act the expression "owner" includes charterer.
9. Subsection (7) of this section shall not apply to Scotland.

Short title.

2. This Act may be cited as the Marine Insurance (Gambling Policies) Act, 1909, and the Marine Insurance Act, 1906, and this Act may be cited together as the Marine Insurance Acts, 1906 and 1909.

The Revenue Act, 1909.

9 Edw. VII.

Cap. XLIII.

Provision as to stamping certain bills of exchange.

10. The provisions in sections 34 and 38 of the Stamp Act, 1891, which relate to bills of exchange payable on demand, or at sight, or on presentation, shall apply also to bills of exchange expressed to be payable at a period not exceeding three days after date or sight which are chargeable with the duty of one penny under s. 10 (2) of the Finance Act 1899.

The Assurance Companies Act, 1909.

9 Edw. VII.

Cap. XLIX.

An Act to consolidate and amend and extend to other Companies carrying on Assurance or Insurance business the Law relating to Life Assurance Companies, and for other purposes connected therewith (3rd December 1909).

Companies to which Act applies.

1. This Act shall apply to all persons or bodies of persons, whether corporate or unincorporate, not being registered under the Acts relating to friendly societies or to trade unions (which persons and bodies of persons are hereinafter referred to as assurance companies), whether established before or after the commencement of this Act and whether established within or without the United Kingdom, who carry on within the United Kingdom assurance business of all or any of the following classes:—

- a) Life assurance business; that is to say, the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life;

- b) Fire insurance business; that is to say, the issue of, or the undertaking of liability under, policies of insurance against loss by or incidental to fire;
- c) Accident insurance business; that is to say, the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents, whether fatal or not, disease, or sickness, or any class of personal accidents, disease, or sickness;
- d) Employers' liability insurance business; that is to say, the issue of, or the undertaking of liability under, policies insuring employers against liability to pay compensation or damages to workmen in their employment;
- e) Bond investment business; that is to say, the business of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at periodical intervals of two months or less, contract to pay the bond holder a sum at a future date, and not being life assurance business as hereinbefore defined;

subject as respects any class of assurance business^f to the special provisions of this Act relating to business of that class.

A company registered under the Companies Acts which transacts assurance business of any such class as aforesaid in any part of the world shall for the purposes of this provision be deemed to be a company transacting such business within the United Kingdom.

General.

Deposit.

2. 1. Every assurance company shall deposit and keep deposited with the Paymaster-General for and on behalf of the Supreme Court the sum of twenty thousand pounds.
2. The sum so deposited shall be invested by the Paymaster-General in such of the securities usually accepted by the Court for the investment of funds placed under its administration as the company may select, and the interest accruing due on any such securities shall be paid to the company.
3. The deposit may be made by the subscribers of the memorandum of association of the company, or any of them, in the name of the proposed company, and, upon the incorporation of the company, shall be deemed to have been made by, and to be part of the assets of, the company, and the registrar shall not issue a certificate of incorporation of the company until the deposit has been made.
4. Where a company carries on, or intends to carry on, assurance business of more than one class, a separate sum of twenty thousand pounds shall be deposited and kept deposited under this section as respects each class of business, and the deposit made in respect of any class of business in respect of which a separate assurance fund is required to be kept shall be deemed to form part of that fund, and all interest accruing due on any such deposit or the securities in which it is for the time being invested shall be carried by the company to that fund.
5. The Paymaster-General shall not accept a deposit except on a warrant of the Board of Trade.
6. The Board of Trade may make rules with respect to applications for warrants, the payment of deposits, and the investment thereof or dealing therewith, the deposit of stocks or other securities in lieu of money, the payment of the interest or dividends from time to time accruing due on any securities in which deposits are for the time being invested, and the withdrawal and transfer of deposits, and the rules so made shall have effect as if they were enacted in this Act, and shall be laid before Parliament as soon as may after they are made.
7. This section shall apply to an assurance company registered or having its head office in Ireland, subject to the following modifications:—

References to the Supreme Court shall be construed as references to the Supreme Court of Judicature in Ireland, and references to the Paymaster-General shall be construed as references to the Accountant-General of the last-mentioned Court.

Separation of funds.

- 3 1. In the case of an assurance company transacting other business besides that of assurance or transacting more than one class of assurance business, a separate account shall be kept of all receipts in respect of the assurance business or of each class of assurance business, and the receipts in respect of the assurance business, or, in the case of a company carrying on more than one class of assurance business, of each class of business, shall be carried to and form a separate assurance fund with an appropriate name: Provided that nothing in this section shall require the investments of any such fund to be kept separate from the investments of any other fund.
2. A fund of any particular class shall be as absolutely the security of the policy holders of that class as though it belonged to a company carrying on no other business than assurance business of that class, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of assurance of that class, and shall not be applied, directly or indirectly, for any purposes other than those of the class of business to which the fund is applicable.

Accounts and balance sheets.

4. Every assurance company shall, at the expiration of each financial year of the company, prepare—
- a) A revenue account for the year in the form or forms set forth in the First Schedule to this Act and applicable to the class or classes of assurance business carried on by the company;
 - b) A profit and loss account in the form set forth in the Second Schedule to this Act, except where the company carries on assurance business of one class only and no other business;
 - c) A balance sheet in the form set forth in the Third Schedule to this Act.

Actuarial report and abstract.

5. 1. Every assurance company shall, once in every five years, or at such shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or byelaws, cause an investigation to be made into its financial condition, including a valuation of its liabilities, by an actuary, and shall cause an abstract of the report of such actuary to be made in the form or forms set forth in the Fourth Schedule to this Act and applicable to the class or classes of assurance business carried on by the company.
2. The foregoing provisions of this section shall also apply whenever at any other time an investigation into the financial condition of an assurance company is made with a view to the distribution of profits, or the results of which are made public.

Statement of assurance business.

6. Every assurance company shall prepare a statement of its assurance business at the date to which the accounts of the company are made up for the purposes of any such investigation as aforesaid in the form or forms set forth in the Fifth Schedule to this Act and applicable to the class or classes of assurance business carried on by the company: Provided that, if the investigation is made annually by any company, the company may prepare such a statement at any time, so that it be made at least once in every five years.

Deposit of accounts, &c. with Board of Trade.

7. 1. Every account, balance sheet, abstract, or statement hereinbefore required to be made shall be printed, and four copies thereof, one of which shall be signed by the chairman and two directors of the company and by the principal officer of the company and, if the company has a managing director, by the managing director, shall be deposited at the Board of Trade within six months after the close of the period to which the account, balance sheet, abstract, or statement relates: Provided that, if in any case it is made to appear to the Board of Trade that the circumstances are such that a longer period than six months should be allowed, the Board may extend that period by such period not exceeding three months as they think fit.

2. The Board of Trade shall consider the accounts, balance sheets, abstracts, and statements so deposited, and, if any such account, balance sheet, abstract, or statement appears to the Board to be inaccurate or incomplete in any respect, the Board shall communicate with the company with a view to the correction of any such inaccuracies and the supply of deficiencies.
3. There shall be deposited with every revenue account and balance sheet of a company any report on the affairs of the company submitted to the shareholders or policy holders of the company in respect of the financial year to which the account and balance sheet relates.
4. Where an assurance company registered under the Companies Acts in any year deposits its accounts and balance sheet in accordance with the provisions of this section, the company may, at the same time, send to the registrar a copy of such accounts and balance sheet; and, where such copy is so sent, it shall not be necessary for the company to send to the registrar a statement in the form of a balance sheet as required by subsection (3) of section twenty-six of the Companies (Consolidation) Act, 1908, and the copy of the accounts and balance sheet so sent shall be dealt with in all respects as if it were a statement sent in accordance with that subsection.

Right of shareholders, &c. to copies of accounts, &c.

8. A printed copy of the last-deposited accounts, balance sheet, abstract, or statement, shall on the application of any shareholder or policy holder of the company be forwarded to him by the company by post or otherwise.

Audit of accounts.

9. Where the accounts of an assurance company are not subject to audit in accordance with the provisions of the Companies (Consolidation) Act, 1908, or the Companies Clauses Consolidation Act, 1845, relating to audit, the accounts of the company shall be audited annually in such manner as the Board of Trade may prescribe, and the regulations made for the purpose may apply to any such company the provisions of the Companies (Consolidation) Act, 1908, relating to audit, subject to such adaptations and modifications as may appear necessary or expedient.

List of shareholders.

10. Every assurance company which is not registered under the Companies Acts, or which has not incorporated in its deed of settlement section ten of the Companies Clauses Consolidation Act, 1845, shall keep a "Shareholders Address Book", in accordance with the provisions of that section, and shall, on the application of any shareholder or policy holder of the company, furnish to him a copy of such book, on payment of a sum not exceeding sixpence for every hundred words required to be copied.

Deed of settlement.

11. Every assurance company which is not registered under the Companies Acts shall cause a sufficient number of copies of its deed of settlement or other instrument constituting the company to be printed, and shall, on the application of any shareholder or policy holder of the company, furnish to him a copy of such deed of settlement or other instrument on payment of a sum not exceeding one shilling.

Publication of authorised, subscribed, and paid-up capital.

12. Where any notice, advertisement, or other official publication of an assurance company contains a statement of the amount of the authorised capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Amalgamation or transfer.

13. 1. Where it is intended to amalgamate two or more assurance companies, or to transfer the assurance business of any class from one assurance company to another company, the directors of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement.

2. The Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.
3. Before any such application is made to the Court: —
 - a) Notice of the intention to make the application shall be published in the Gazette; and
 - b) A statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the Court otherwise directs, be transmitted to each policy holder of each company in manner provided by section one hundred and thirty-six of the Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally: Provided that it shall not be necessary to transmit such statement and other documents to policy holders other than life, endowment, sinking fund, or bond investment policy holders, nor in the case of a transfer to such policy holders if the business transferred is not life assurance business or bond investment business; and
 - c) The agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy holders and shareholders at the offices of the companies for a period of fifteen days after the publication of the notice in the Gazette.
4. No assurance company shall amalgamate with another, or transfer its business to another, unless the amalgamation or transfer is sanctioned by the Court in accordance with this section.

Statements in case of amalgamation or transfer.

14. Where an amalgamation takes place between any assurance companies, or where any assurance business of one such company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within ten days from the date of the completion of the amalgamation or transfer, deposit with the Board of Trade —

- a) Certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer; and
- b) A certified copy of the agreement or deed under which the amalgamation or transfer is effected; and
- c) Certified copies of the actuarial or other reports upon which that agreement or deed is founded; and
- d) A declaration under the hand of the chairman of each company, and the principal officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities, or other property by or with the knowledge of any parties to the amalgamation or transfer.

Special provisions as to winding up of assurance companies.

15. The Court may order the winding up of an assurance company, in accordance with the Companies (Consolidation) Act, 1908, and the provisions of that Act shall apply accordingly, subject, however, to the following modification:

The company may be ordered to be wound up on the petition of ten or more policy holders owning policies of an aggregate value of not less than ten thousand pounds:

Provided that such a petition shall not be presented except by the leave of the Court, and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the Court and until security for costs for such amount as the Court may think reasonable has been given.

Winding up of subsidiary companies.

16. 1. Where the assurance business or any part of the assurance business of an assurance company has been transferred to another company under an arrangement in pursuance of which the first-mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the Court necessary, with a view to the companies being wound up as if they were one company.
2. The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary company.
3. In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.
4. Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not direct the subsidiary company to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.
5. An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.
6. Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

Valuation of annuities and policies.

17. 1. Where an assurance company is being wound up by the Court, or subject to the supervision of the Court, or voluntarily, the value of a policy of any class or of a liability under such a policy requiring to be valued in such winding up shall be estimated in manner applicable to policies and liabilities of that class provided by the Sixth Schedule to this Act.
2. The rules in the Sixth and Seventh Schedules to this Act shall be of the same force, and may be repealed, altered, or amended, as if they were rules made in pursuance of section two hundred and thirty-eight of the Companies (Consolidation) Act, 1908, and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of assurance companies.

Power to Court to reduce contracts.

18. The Court, in the case of an assurance company which has been proved to be unable to pay its debts, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the Court thinks just, in place of making a winding-up order.

Extension of 8 Edw. 7. c. 69. s. 274, to all assurance companies established outside the United Kingdom.

19. Section two hundred and seventy-four of the Companies (Consolidation) Act, 1908 (which contains provisions as to companies incorporated outside the Uni-

ted Kingdom), shall apply to every assurance company constituted outside the United Kingdom which carries on assurance business within the United Kingdom, whether incorporated or not.

Custody and inspection of documents deposited with Board of Trade.

20. The Board of Trade may direct any documents deposited with them under this Act, or certified copies thereof, to be kept by the registrar or by any other officer of the Board of Trade; and any such documents and copies shall be open to inspection, and copies thereof may be procured by any person on payment of such fees as the Board of Trade may direct.

Evidence of documents.

21. 1. Every document deposited under this Act with the Board of Trade, and certified by the registrar or by any person appointed in that behalf by the President of the Board of Trade to be a document so deposited, shall be deemed to be a document so deposited.
2. Every document purporting to be certified by the registrar, or by any person appointed in that behalf by the President of the Board of Trade, to be a copy of a document so deposited shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document, unless some variation between it and the original document be proved.

Alteration of forms.

22. The Board of Trade may, on the application or with the consent of an assurance company, alter the forms contained in the schedules to this Act as respects that company, for the purpose of adapting them to the circumstances of that company.

Penalty for non-compliance with Act.

23. Any assurance company which makes default in complying with any of the requirements of this Act shall be liable to a penalty not exceeding one hundred pounds, or, in the case of a continuing default, to a penalty not exceeding fifty pounds for every day during which the default continues, and every director, manager, or secretary, or other officer or agent of the company who is knowingly a party to the default shall be liable to a like penalty; and, if default continue for a period of three months after notice of default by the Board of Trade (which notice shall be published in one or more newspapers as the Board of Trade may, upon the application of one or more policy holders or shareholders, direct), the default shall be a ground on which the Court may order the winding up of the company, in accordance with the Companies (Consolidation) Act, 1908.

Penalty for falsifying statements, &c.

24. If any account, balance sheet, abstract, statement, or other document required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be guilty of a misdemeanour and shall be liable on conviction on indictment to fine and imprisonment, or on summary conviction to a fine not exceeding fifty pounds.

Recovery and application of penalties.

25. Every penalty imposed by this Act shall be recovered and applied in the same manner as penalties imposed by the Companies (Consolidation) Act, 1908, are recoverable and applicable.

Service of notices.

26. Any notice which is by this Act required to be sent to any policy holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy:

Provided that where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any notice which is by this Act required to be sent to policy holders shall also be sent to such person at the address specified by him in his notice.

Accounts, &c. to be laid before Parliament.

27. The Board of Trade shall lay annually before Parliament the accounts, balance sheets, abstracts, statements, and other documents under this Act, or purporting to be under this Act, deposited with them during the preceding year, except reports on the affairs of assurance companies submitted to the shareholders or policy holders thereof, and may append to such accounts, balance sheets, abstracts, statements, or other documents any note of the Board of Trade thereon, and any correspondence in relation thereto.

Savings.

28. 1. This Act shall not affect the National Debt Commissioners or the Postmaster-General, acting under the authorities vested in them respectively by the Government Annuities Acts, 1829 to 1888, and the Post Office Savings Bank Acts, 1861 to 1908.
2. This Act shall not apply to a member of Lloyd's, or of any other association of underwriters approved by the Board of Trade, who carries on assurance business of any class, provided that he complies with the requirements set forth in the Eighth Schedule to this Act, and applicable to business of that class.
3. Save as otherwise expressly provided by this Act, nothing in this Act shall apply to assurance business of any class other than one of the classes specified in section one of this Act, and a policy shall not be deemed to be a policy of fire insurance by reason only that loss by fire is one of the various risks covered by the policy.

Interpretation.

29. In this Act, unless the context otherwise requires,—

The expression "chairman" means the person for the time being presiding over the board of directors or other governing body of the assurance company;

The expression "annuities on human life" does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade, or employment, or of the dependants of such persons;

The expression "policy holder" means the person who for the time being is the legal holder of the policy for securing the contract with the assurance company;

The expression "underwriter" includes any person named in a policy or other contract of insurance as liable to pay or contribute towards the payment of the sum secured by such policy or contract;

The expression "financial year" means each period of twelve months at the end of which the balance of the accounts of the assurance company is struck, or, if no such balance is struck, then the calendar year;

The expression "Court" means the High Court of Justice in England, except that in the case of an assurance company registered or having its head office in Ireland it means, in the provisions of this Act, the High Court of Justice in Ireland, and in the case of an assurance company registered or having its head office in Scotland it means, in the provisions of this Act other than those relating to deposits, the Court of Session, in either division thereof;

The expression "Companies Acts" includes the Companies (Consolidation) Act, 1908, and any enactment repealed by that Act;

The expression "registrar" means the Registrar of Joint Stock Companies;

The expression "actuary" means an actuary possessing such qualifications as may be prescribed by rules made by the Board of Trade;

The expression "Gazette" means the London, Edinburgh, or Dublin Gazette, as the case may be.

Application to Special Classes of Business.**Application to life assurance companies.**

30. Where a company carries on life assurance business, this Act shall apply with respect to that business, subject to the following modifications:—

- a) "Policy on human life" shall mean any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;
- b) Where the company grant annuities upon human life, "policy" shall include the instrument evidencing the contract to pay such an annuity, and "policy holder" includes annuitant;
- c) The obligation to deposit and keep deposited the sum of twenty thousand pounds shall apply notwithstanding that the company has previously made and withdrawn its deposit, or been exempted from making any deposit under any enactment hereby repealed;
- d) Where the company intends to amalgamate with or to transfer its life assurance business to another assurance company, the Court shall not sanction the amalgamation or transfer in any case in which it appears to the Court that the life policy holders representing one-tenth or more of the total amount assured in the company dissent from the amalgamation or transfer;
- e) Nothing in this Act providing that the life assurance fund shall not be liable for any contracts for which it would not have been liable had the business of the company been only that of life assurance shall affect the liability of that fund, in the case of a company established before the ninth day of August eighteen hundred and seventy, for contracts entered into by the company before that date;
- f) In the case of a company carrying on life assurance business and established before the ninth day of August eighteen hundred and seventy, by the terms of whose deed of settlement the whole of the profits of all the business carried on by the company are paid exclusively to the life policy holders, and on the face of whose life policies the liability of the life assurance fund in respect of the other business distinctly appears, such of the provisions of this Act as require the separation of funds, and exempt the life assurance fund from liability for contracts to which it would not have been liable had the business of the company been only that of life assurance, shall not apply;
- g) Any business carried on by an assurance company which under the provisions of any special Act relating to that company is to be treated as life assurance business shall continue to be so treated, and shall not be deemed to be other business or a separate class of assurance business within the meaning of this Act;
- h) In the case of a mutual company whose profits are allocated to members wholly or mainly by annual abatements of premium, the abstract of the report of the actuary on the financial condition of the company, prepared in accordance with the Fourth Schedule to this Act, may, notwithstanding anything in section five of this Act, be made and returned at intervals not exceeding five years, provided that, where such return is not made annually, it shall include particulars as to the rates of abatement of premiums applicable to different classes or series of assurances allowed in each year during the period which has elapsed since the previous return under the Fourth Schedule.

Application to fire insurance companies.

31. Where a company carries on fire insurance business, this Act shall apply with respect to that business, subject to the following modifications:—

- a) It shall not be necessary for the company to prepare any statement of its fire insurance business in accordance with the Fourth and Fifth Schedules to this Act;
- b) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply with respect to the fire insurance business carried on by the company if the company has commenced to carry on that business within the United Kingdom before the passing of this Act;
- c) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply where the company is an association of owners or occupiers of buildings or other property which satisfies the Board of Trade that it is carrying on, or is about to carry on, business wholly or mainly

- for the purpose of the mutual insurance of its members against damage by or incidental to fire caused to the houses or other property owned or occupied by them;
- d) It shall not be necessary to make a deposit in respect of fire insurance business where the company has made a deposit in respect of any other class of assurance business, and, where a company, having made a deposit in respect of fire insurance business, commences to carry on life assurance business or employers' liability insurance business, the company may transfer the deposit so made to the account of that other business, and after such transfer the deposit shall be treated as if it had been made in respect of such other business;
 - e) So much of this Act as requires an assurance company transacting other business besides assurance business, or more than one class of assurance business, to keep separate funds into which all receipts in respect of the assurance business or of each class of assurance business are to be paid shall not apply as respects fire insurance business;
 - f) The provisions of this Act with respect to the amalgamation of companies shall not apply where the only classes of assurance business carried on by both of the companies are fire insurance business, or fire insurance business and accident insurance business, and the provisions of this Act with respect to the transfer of assurance business from one company to another shall not apply to fire insurance business.

Application to accident insurance companies.

32. Where a company carries on accident insurance business, this Act shall apply with respect to that business, subject to the following modifications:

- a) In lieu of the provisions of sections five and six of this Act the following provisions shall be substituted:
 "The company shall annually prepare a statement of its accident insurance business in the form set forth in the Fourth Schedule to this Act and applicable to accident insurance business, and the statement shall be printed, signed, and deposited at the Board of Trade in accordance with section seven of this Act";
- b) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply with respect to the accident insurance business carried on by the company if the company has commenced to carry on that business in the United Kingdom before the passing of this Act;
- c) It shall not be necessary to make or keep a deposit in respect of accident insurance business where the company has made a deposit in respect of any other class of assurance business, and, where a company, having made a deposit in respect of accident insurance business, commences to carry on life assurance business or employers' liability insurance business, the company may transfer the deposit so made to the account of that other business, and after such transfer the deposit shall be treated as if it had been made in respect of such other business;
- d) So much of this Act as requires an assurance company transacting other business besides assurance business, or more than one class of assurance business, to keep separate funds into which all receipts in respect of the assurance business or of each class of assurance business are to be paid shall not apply as respects accident insurance business;
- e) The provisions of this Act with respect to the amalgamation of companies shall not apply where the only classes of assurance business carried on by both of the companies are accident insurance business, or accident insurance business and fire insurance business, and the provisions of this Act with respect to the transfer of assurance business from one company to another shall not apply to accident insurance business;
- f) The expression "policy" includes any policy under which there is for the time being an existing liability already accrued, or under which a liability may accrue;
- g) Where a sum is due, or a weekly or other periodical payment is payable, under any policy, the expression "policy holder" includes the person to whom the sum is due or the weekly or other periodical payment payable.

Application to employers' liability insurance companies.

33. 1. Where a company carries on employers' liability insurance business, this Act shall apply with respect to that business, subject to the following modifications:

- a) This Act shall not apply where the company is an association of employers which satisfies the Board of Trade that it is carrying on, or is about to carry on, business wholly or mainly for the purpose of the mutual insurance of its members against liability to pay compensation or damages to workmen employed by them, either alone or in conjunction with insurance against any other risk incident to their trade or industry;
- b) This Act shall not apply where the company carries on the employers' liability insurance business as incidental only to the business of marine insurance by issuing marine policies, or policies in the form of marine policies, covering liability to pay compensation or damages to workmen as well as losses incident to marine adventure analogous thereto;
- c) In lieu of the provisions of sections five and six of this Act the following provisions shall be substituted:—

“The company shall annually prepare a statement of its employers' liability insurance business in the form set forth in the Fourth Schedule to this Act and applicable to employers' liability insurance business, and shall cause an investigation of its estimated liabilities to be made by an actuary so far as may be necessary to enable the provisions of that form to be complied with, and the statement shall be printed, signed, and deposited at the Board of Trade in accordance with section seven of this Act”:

- d) Such of the provisions of this Act as relate to deposits to be made under this Act shall not apply with respect to the employers' liability insurance business carried on by a company where the company had commenced to carry on that business within the United Kingdom before the twenty-eighth day of August nineteen hundred and seven:
- e) As soon as the employers' liability fund set apart and secured for the satisfaction of the claims of policy holders of that class amounts to forty thousand pounds, the Paymaster General shall, if the company has made a deposit in respect of any other class of assurance business, return to the company the money deposited in respect of its employers' liability insurance business, and it shall not thereafter be necessary for the company to keep any sum deposited in respect of that business, so long as the sum deposited in respect of any other class of assurance business is kept deposited:
- f) Where money is paid into a county court under the provisions of the Eighth Schedule to this Act, the court shall (unless the court for special reason sees fit to direct otherwise) order the lump sum to be invested or applied in the purchase of an annuity or otherwise, in such manner that the duration of the benefit thereof may, as far as possible, correspond with the probable duration of the incapacity:
- g) The expression “policy” includes any policy under which there is for the time being an existing liability already accrued, or under which any liability may accrue:
- h) Where any sum is due, or a weekly payment is payable, under any policy, the expression “policy holder” includes the person to whom the sum is due or the weekly payment payable:
- i) If the company carries on employers' liability insurance business outside the United Kingdom, that business shall not be treated as part of the employers' liability insurance business carried on by the company for the purposes of this Act.

2. In the application of this section to Scotland the expression “county court” means sheriff court.

Application to bond investment companies.

34. Where a company carries on bond investment business, this Act shall apply with respect to that business, subject to the following modifications:—

- a) The expression "policy" includes any bond, certificate, receipt, or other instrument evidencing the contract with the company, and the expression "policy holder" means the person who for the time being is the legal holder of such instrument:
 - b) Such of the provisions of this Act as relate to deposits shall not apply with respect to the bond investment business carried on by the company, if the company has commenced to carry on that business in the United Kingdom before the passing of this Act:
 - c) As soon as the bond investment fund set apart and secured for the satisfaction of the claims of the policy holders of that class amounts to forty thousand pounds, the Paymaster-General shall, if the company has made a deposit in respect of any other class of assurance business, return to the company the money deposited in respect of its bond investment business, and it shall not thereafter be necessary for the company to keep any sum deposited in respect of that business, so long as the sum deposited in respect of any other class of business is kept deposited:
 - d) The first statement of the bond investment business of the company shall be deposited at the Board of Trade on or before the thirtieth day of June nineteen hundred and eleven:
 - e) The company shall not give the holder of any policy issued after the passing of this Act any advantage dependent on lot or chance, but this provision shall not be construed as in anywise prejudicing any question as to the application to any such transaction, whether in respect of a policy issued before or after the passing of this Act, of the law relating to lotteries.
35. (Power of Board of Trade to exempt unregistered trade unions and friendly societies.)
36. (Provisions as to Collecting Societies and Industrial Assurance Companies.)

Supplemental.

Repeal.

37. The enactments mentioned in the Ninth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Provided that nothing in this repeal shall affect any investigation made, or any statement, abstract, or other document deposited, under any enactment hereby repealed, but every such investigation shall be deemed to have been made and every such document prepared and deposited under this Act.

Short title and commencement.

38. 1. This Act may be cited as the Assurance Companies Act, 1909.
 2. This Act shall come into operation on the first day of July nineteen hundred and ten, except that as respects section thirty-six it shall come into operation on the passing thereof.

Schedules.

The Finance (1909–10) Act, 1910.

10 Edw. VII.

Cap. VIII.

Alteration and extension of duty on contract notes.

77. 1. There shall be charged on every contract note as defined by this section for or relating to the sale or purchase of any stock or marketable security the following stamp duties:—

Where the value of the stock or marketable security	
is 5 <i>l.</i> and does not exceed 100 <i>l.</i>	Sixpence.
exceeds 100 <i>l.</i> and does not exceed 500 <i>l.</i>	One Shilling.
exceeds 500 <i>l.</i> and does not exceed 1,000 <i>l.</i>	Two Shillings.
exceeds 1,000 <i>l.</i> and does not exceed 1,500 <i>l.</i>	Three Shillings.
exceeds 1,500 <i>l.</i> and does not exceed 2,500 <i>l.</i>	Four Shillings.
exceeds 2,500 <i>l.</i> and does not exceed 5,000 <i>l.</i>	Six Shillings.

Where the value of the stock or marketable security—

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| exceeds 5,000 <i>l.</i> and does not exceed 7,500 <i>l.</i> | | Eight Shillings, |
| exceeds 7,500 <i>l.</i> and does not exceed 10,000 <i>l.</i> | | Ten Shillings, |
| exceeds 10,000 <i>l.</i> and does not exceed 12,500 <i>l.</i> | | Twelve Shillings, |
| exceeds 12,500 <i>l.</i> and does not exceed 15,000 <i>l.</i> | | Fourteen Shillings, |
| exceeds 15,000 <i>l.</i> and does not exceed 17,500 <i>l.</i> | | Sixteen Shillings, |
| exceeds 17,500 <i>l.</i> and does not exceed 20,000 <i>l.</i> | | Eighteen Shillings, |
| exceeds 20,000 <i>l.</i> | | One Pound. |
2. Where a contract note is a continuation or carrying over note made for the purpose of continuing or carrying over any transaction for the sale or purchase of stock or marketable securities, the contract note, although it is made in respect of both a sale and purchase, shall be charged with duty under this section as if it related to one of those transactions only, and if different rates of duty are chargeable in respect of those transactions, to that one of those transactions which would render the contract note chargeable at the highest rate.
 3. For the purposes of this Part of this Act, the expression "contract note" means the note sent by a broker or agent to his principal, or by any person who by way of business deals, or holds himself out as dealing, as a principal in any stock or marketable securities, advising the principal, or the vendor or purchaser, as the case may be, of the sale or purchase of any stock or marketable security, but does not include a note sent by broker or agent to his principal where the principal is himself acting as broker or agent for a principal, and is himself either a member of a stock exchange in the United Kingdom or a person who *bonâ fide* carries on the business of a stock-broker in the United Kingdom, and is registered as such in the list of stock-brokers kept by the Commissioners.
 4. Where a contract note advises the sale or purchase of more than one description of stock or marketable security, the note shall be deemed to be as many contract notes as there are descriptions of stocks or securities sold or purchased.

Obligation to execute contract note.

78. 1. Any person who effects any sale or purchase of any stock or marketable security of the value of five pounds or upwards as a broker or agent, and any person who by way of business deals, or holds himself out as dealing, as a principal in any stock or marketable security, and buys or sells any such stock or marketable security of a value of five pounds or upwards, shall forthwith make and execute a contract note, and transmit the note to his principal, or to the vendor or purchaser of the stock or marketable security, as the case may be, and in default of so doing shall incur a fine of twenty pounds: Provided that this section shall not apply in the case of transactions carried out in the course of their ordinary business relations between members of stock exchanges in the United Kingdom.
2. If any person makes or executes any contract note chargeable with duty and not being duly stamped, he shall incur a fine twenty pounds.
3. No broker, agent, or other person shall have any legal claim to any charge for brokerage, commission, or agency, with reference to the sale or purchase of any stock or marketable security of the value of five pounds or upwards, if he fails to comply with the provisions of this section.
4. All stamp duties on a contract note are to be denoted by an adhesive stamp appropriated to a contract note, and the stamp is to be effectively cancelled by the person by whom the note is executed by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing.
5. Any stamp duty on a contract note may be added to the charge for brokerage or agency, and shall be recoverable as part of such charge.

Extension of provisions as to contract notes to sale or purchase of options.

79. 1. The provisions of this Part of this Act as to contract notes shall apply to any contract under which an option is given or taken to purchase or sell any stock or marketable security at a future time at a certain price, as it applies to the sale or purchase of any stock or marketable security but the stamp duty on such a contract shall be one-half only of that chargeable

on a contract note: Provided that, if under the contract a double option is given or taken, the contract shall be deemed to be a separate contract in respect of each option.

2. Any contract note made or executed in pursuance and in consequence of the exercise of an option given or taken under a contract duly stamped in accordance with the provisions of this section shall be charged with one-half only of the duty which would otherwise have been chargeable thereon under this Part of this Act, provided that it bears on its face a certificate by the broker, agent, or other person mentioned in the last preceding section to the effect that it is made or executed in the exercise of an option for which a duly stamped contract has been rendered on the date mentioned in the certificate.

Merchandise Marks Act, 1911.

1 & 2 Geo. V.

Cap. XXXI.

An Act to amend Section Sixteen of the Merchandise Marks Act, 1887 (16th December 1911).

Power to require information in respect of imported goods bearing fraudulent marks.

1. 1. Where any goods which, if sold, would be liable to forfeiture under the Merchandise Marks Act, 1887, are imported into the United Kingdom, and the goods bear any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, and the Commissioners of Customs and Excise are, upon representations made to them, satisfied that the use of the name or trade mark is fraudulent, the proper officer of Customs and Excise may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods, and to furnish information as to the name and address of the person by whom the goods were consigned to the United Kingdom and the name and address of the person to whom the goods were sent in the United Kingdom; and, if the importer or his agent fails within fourteen days to comply with any such requirement, he shall, for each offence, forfeit the sum of one hundred pounds.
2. Any information obtained from the importer of the goods or his agent under this section, or from any other source, may be communicated by the Commissioners to any person whose name or trade mark is alleged to have been used or infringed.
3. This section shall have effect as if it were part of section sixteen of the Merchandise Marks Act, 1887.

Short title.

2. This Act may be cited as the Merchandise Marks Act, 1911, and the Merchandise Marks Acts, 1887 to 1894, and this Act may be cited together as the Merchandise Marks Acts, 1887 to 1911.

Merchant Shipping (Stevedores and Trimmers) Act, 1911.

1 & 2 Geo. V.

Cap. XL1

An Act to enlarge the Remedies of Persons having claims for work done in connection with the stowing or discharging of ships' cargoes or the trimming of coal on board ships (16th December 1911).

Power to arrest ship on claim for work done in stowing cargo, &c.

1. 1. If it is claimed that any sum is due to any person from the owners of a ship for work done at any place in the United Kingdom by that person in connec-

tion with the stowing or discharging of cargoes on board or from that ship, or the trimming of coal on board that ship, and that ship is at any time found in any place in England or Ireland or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with rules of court that *prima facie* the claim against the owners is a good claim and that none of the owners reside in the United Kingdom, issue an order for the arrest of the ship.

2. An order under this Act shall be directed to some officer of customs and excise, or some other officer named in the order, and shall require him to detain the ship until such time as satisfaction has been made by the owners, agent, master, or consignee thereof in respect of the claim, or until security, to be approved by the judge, has been given by them or him, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the claim, and to pay all costs and damages that may be awarded thereon, and where any such order is made, the officer to whom the order is directed shall detain the ship accordingly.
3. In any legal proceedings in relation to any such claim as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship in respect of which the work giving rise to the claim was done, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceedings.
4. Where a complaint is made to the Board of Trade that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the limits of England or Ireland or three miles from the coast thereof, the ship shall, if the Board so direct, be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention if made in accordance with the directions of the Board.
5. Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act.
6. If the owner of a ship is a corporation, the owner shall, for the purposes of this Act, be deemed to reside in the United Kingdom if the corporation has an office in the United Kingdom at which service of writs can be effected.

Application of Act where a ship is demised to charterers.

2. Where a ship has been demised to charterers, the provisions of this Act shall apply to claims against the charterers of the ship as they apply to claims against the owners of a ship, with the substitution of charterers for owners: Provided that no ship shall be detained on a claim against the charterers of the ship after the expiration of the term for which the ship was demised to them.

Proceedings in Admiralty.

3. Any person having a claim to which this Act applies may, if he so desires, instead of proceeding under the foregoing provisions of this Act institute proceedings in Admiralty for enforcing the claim, and all courts having jurisdiction in Admiralty shall, if proceedings are so instituted, have the same jurisdiction for the purpose of enforcing the claim as if the claim were a claim for necessities supplied to the ship.

Saving.

4. Nothing in this Act shall affect the power of any person to enforce any claim to which this Act applies otherwise than in accordance with the provisions of this Act.

Short title.

5. This Act may be cited as the Merchant Shipping (Stevedores and Trimmers) Act, 1911.

Merchant Shipping Act, 1911.

1 & 2 Geo. V.

Cap. XLII.

An Act to give jurisdiction under section seventy-six and Part VIII. of the Merchant Shipping Act, 1894, to certain British Courts in foreign countries (16th December 1911).

Extension of jurisdiction under s. 76 and Part VIII. of 57 & 58 Vict. c. 60 to certain British Courts in foreign countries.

1. 1. Among the courts before which a ship may be brought for adjudication under section seventy-six of the Merchant Shipping Act, 1894 (which relates to proceedings on forfeiture of a ship), there shall be included any British Court in a foreign country, being a court having Admiralty jurisdiction, as if such a court were included among the courts specified in that section, and that section shall be construed and have effect accordingly.
2. Any such British Court shall also have jurisdiction to entertain any proceedings under Part VIII. of the Merchant Shipping Act, 1894, and accordingly section five hundred and four of that Act (which relates to the power of courts to consolidate claims against owners) shall be construed and have effect as if such a court were included among the courts to which an application under that section may be made.
3. In this Act the expression 'British Court in a foreign country' means any British Court having jurisdiction out of His Majesty's Dominions in pursuance of an Order in Council whether made under any Act or otherwise.

Short title and construction.

2. This Act may be cited as the Merchant Shipping Act, 1911, and shall be construed as one with the Merchant Shipping Act, 1894, and the Merchant Shipping Acts, 1894 to 1907, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1911.

Maritime Conventions Act, 1911.

1 & 2 Geo. V.

Cap. LVII.

An Act to amend the Law relating to Merchant Shipping with a view to enabling certain Conventions to be carried into effect (16th December 1911).

Whereas at the Conference held at Brussels in the year nineteen hundred and ten two conventions, dealing respectively with collisions between vessels and with salvage, were signed on behalf of His Majesty, and it is desirable that such amendments should be made in the law relating to merchant shipping as will enable effect to be given to the conventions:

Be it therefore enacted etc. as follows:

Provisions as to Collisions, &c.

Rule as to division of loss.

1. 1. Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Provided that

- a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

- b) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and
 - c) nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.
2. For the purposes of this Act, the expression 'freight' includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

Damages for personal injuries.

2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several:
 Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Right of contribution.

3. 1. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

2. In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Abolition of statutory presumptions of fault.

4. 1. Subsection (4) of Section four hundred and nineteen of the Merchant Shipping Act, 1904 (which provides that a ship shall be deemed in fault in a case of collision where any of the collision regulations have been infringed by that ship), is hereby repealed.
2. The failure of the master or person in charge of a vessel to comply with the provisions of section four hundred and twenty-two of the Merchant Shipping Act, 1894, (which imposes a duty upon masters and persons in charge of vessels after a collision to stand by and assist the other vessel) shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default, and accordingly subsection (2) of that section shall be repealed.

Jurisdiction in cases of loss of life or personal injury.

5. Any enactment which confers on any court Admiralty jurisdiction in respect of damage shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought in rem or in personam.

Provisions as to Salvage.

General duty to render assistance to persons in danger at sea.

6. 1. The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, her crew and passengers (if any), render

assistance to every person, even if such person be a subject of a foreign State at war with His Majesty, who is found at sea in danger of being lost, and, if he fails to do so, he shall be guilty of a misdemeanour.

2. Compliance by the master or person in charge of a vessel with the provisions of this section shall not affect his right or the right of any other person to salvage.

Apportionment of salvage amongst owners, &c., of foreign ship.

7. Where any dispute arises as to the apportionment of any amount of salvage among the owners, master, pilot, crew, and other persons in the service of any foreign vessel, the amount shall be apportioned by the court or person making the apportionment in accordance with the law of the country to which the vessel belongs.

General Provisions.

Limitation of actions.

8. No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment:

Provided that any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

Application of Act.

9. 1. This Act shall extend throughout His Majesty's dominions and to any territories under his protection, and to Cyprus:
 Provided that it shall not extend to the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.
2. This Act shall not apply in any case in which proceedings have been taken before the passing thereof and all such cases shall be determined as though this Act had not been passed.
3. The provisions of this Act shall be applied in all cases heard and determined in any court having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused or the salvage services in question were rendered, and subsection (9) of section twenty-five of the Supreme Court of Judicature Act, 1873, shall cease to have effect.
4. This Act shall apply to any persons other than the owners responsible for the fault of the vessel as though the expression "owners" included such persons, and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the vessel, this Act shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

Short title and construction.

10. This Act may be cited as the Maritime Conventions Act, 1911, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1907.

Finance Act, 1912.

2 & 3 Geo. V.

Cap. VIII.

Stamping of policies of sea insurance which are subject to a contingent increase of premium.

8. Where the premium or consideration for a policy of sea insurance is expressed to be a sum not exceeding the rate of half-a-crown per cent. of the sum insured, and is subject to an increase (whether defined or not in the policy) in the event of the occurrence of a specified contingency, the premium or consideration shall, for the purpose of the Stamp Act, 1891, be treated as a premium or consideration not exceeding the rate of half-a-crown per cent. on the sum insured. But if, owing to the occurrence of the contingency which is the occasion for an increase of the premium or consideration, the premium or consideration is increased so as to exceed the rate of half-a-crown per cent. of the sum insured, the policy or a new policy to be thereupon issued shall be stamped with such an additional sum as is required to represent the additional duty payable, and may be so stamped without penalty at any time not exceeding thirty days after the date on which the increased premium or consideration becomes ascertained.

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